

Meeting Agenda
State College Borough Council
Work Session
June 14, 2021
7:00 P.M.

- I. Call to Order**
- II. Virtual Meeting Procedure Overview**
- III. Public Hour – Hearing of Citizens**
- V. C-NET’s Annual Report [20 Minutes]**

Cynthia Hahn, C-NET’s Director, will provide Council with an overview of C-NET’s activities over the past year.

VI. Introduction of Right-of-Way Ordinance [20 Minutes]

On August 14, 2020, State College Borough engaged the Cohen Law Group to assist the Borough in drafting amendments to the Borough’s wireless facilities management ordinance in order to bring the ordinance into compliance with recent changes in federal law. Specifically, the amendments were to address the Federal Communications Commission’s “Third Report and Order and Declaratory Ruling,” which establishes new regulations for small cell facilities located in the public rights-of-way. The proposed ordinance was drafted by the Cohen Law Group in conjunction with Borough staff. The proposed ordinance amends and establishes definitions relating to wireless communications facilities and repeals and replaces Section 19-2001(e), “Wireless Communications Facilities,” of the Borough Code. Mike Roberts from the Cohen Law Group will attend the meeting to provide Council with an overview of the ordinance. The ordinance is introduced for discussion at this meeting. Council will be asked to adopt the ordinance at the June 21, 2021, Council meeting. [*Page 5*]

VII. Introduction of Proposed Amendments to Chapter IX, Part I, Vehicle Peddler Eating and Drinking License of the State College Codification of Ordinances [20 Minutes]

Over the past several years, there has been an increasing interest among our community in the services of Mobile Food vendors for various events and functions being held by residents and Borough organizations. Most recently, those requests have come from events or functions at a church, community pool, and an estate auction. Under Chapter IX, Part I, the current Vehicle Peddler Eating and Drinking License code, vehicle peddling, including Mobile Food Vehicles, is restricted to private property within the Commercial and Commercial Incentive Zoning districts.

Based on feedback and requests Borough staff drafted amendments to Chapter IX, Part I. The draft amendments were presented to the State College Board of Health at their April 13, 2021, meeting. The Board of Health agreed with and voted unanimously to recommend to Borough Council the amendments proposed by Borough staff.

Since this code is being amended to permit greater access to mobile food vehicle vendors, other minor amendments are also recommended to revise terms including changing Vehicle Peddler Eating and Drinking License to Mobile Retail Food Facility License and Vehicle Peddler to Mobile Food Peddler. [Page 39]

The most significant proposed amendments to this code include:

- Add Mobile Retail Food Facilities may be approved in all zoning districts rather than the current restriction to Commercial and Commercial Incentive Districts with the submission and approval of a Special Event application. The code will continue to permit Mobile Retail Food Facilities in Commercial and Commercial Incentive Districts without having to submit a Special Event application for Borough Council and/or Borough Manager approval.
- Remove the requirement that Mobile Food Peddlers include their business name and logo on all paper products.
- Add that Mobile Retail Food Facilities in Borough parks require the submission and approval of a Special Event application.
- Authorize Mobile Food Peddlers to occupy a fixed location in the setback areas of a building or lot with specific permission in writing from the property owner.

These proposed amendments are being introduced to Borough Council at this work session. Staff will provide a brief overview of the proposed amendments. The ordinance amending Chapter IX, Part I will be scheduled for enactment at the June 21, 2021, Council meeting.

VIII. Introduction of an Ordinance Establishing a Community Oversight Board (COB) [45 Minutes]

Since Council established an Ad Hoc COB Study Committee in July 2020 to research, analyze, and recommend options for a Community Oversight Board, work has been done to be in a position to craft an ordinance that best suits the need of State College Borough.

As a brief overview, the COB Study Committee presented their report to Council in December 2020. Between January 2021 and May 28, 2021, Council held six (6) work sessions to review and discuss the Committee's recommendations. Council also heard from and had discussions with Study

Committee Chair Mark Bergstrom and the Borough's Labor Attorney Rich Miller. Council also held an Executive Session with Rich Miller, the Borough's labor counsel, to discuss legal issues related to the Oversight Board.

After the Council work session held on May 28, 2021, Council completed a review and reached consensus on most of the COB Study Committee's recommendations. Based on this consensus, Borough staff drafted a Borough Community Oversight Board (COB) ordinance for Council's consideration. [Page 51]

At tonight's work session, Council is asked to begin to review the draft ordinance. Additionally, public comment was not received during the Council work sessions in which COB was discussed. Council is asked to schedule a public hearing on the draft Community Oversight Board ordinance to receive comments from the public.

As a reminder, the schedule Council previously agreed to is as follows:

- Complete Review of Sections 1 through 3 on May 14.- **DONE**
- Complete Review of Sections 5 through 7 on May 28 - **DONE**
- Receive draft ordinance by no later than June 15 - **DONE**
- Hold one or more public comment meetings between June 15 and July 31
- Adopt ordinance by no later than August 16
- Appoint Oversight Board by no later than September 30
- Board to hold first meeting by no later than October 31

Council will discuss the proposed ordinance at this meeting. One or more Public comment meetings will be scheduled in July, and the ordinance will be Council agendas in August with enactment scheduled at the August 16, 2021, meeting.

IX. Review of 2022-2026 Capital Improvement Plan [45 Minutes]

Council will continue its review of the of the 2022-2026 Capital Improvement Plan. The sections of the Plan that will be reviewed at this meeting are:

- Parking Fund – Pages 18 – 20
- Parks Projects – Pages 21 - 24

X. Adjournment

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**BOROUGH OF STATE COLLEGE
CENTRE COUNTY, PENNSYLVANIA**

ORDINANCE NO. _____

AN ORDINANCE OF THE BOROUGH OF STATE COLLEGE, CENTRE COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF CHAPTERS XVI AND XIX OF THE STATE COLLEGE BOROUGH CODE; PROVIDING FOR PURPOSES RELATED TO THE ADOPTION OF THE AMENDMENTS; PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TELECOMMUNICATIONS TOWERS, NON-TOWER WIRELESS COMMUNICATIONS FACILITIES, AND SMALL WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, be it, and it is hereby **ORDAINED** by the Council of the Borough of State College, Centre County, Commonwealth of Pennsylvania, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I. Amendment to Section 16-302, “Defined Terms.”

Section 16-302 of the State College Borough Streets and Sidewalks Ordinance is hereby amended by repealing the definition of “Wireless Communications Facilities” and adding the following definitions to the “Defined terms.” section:

1. *Small Wireless Communications Facility (Small WCF)* -- A wireless communications facility that meets the following criteria:
 - (1) 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 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.

(4) The facilities do not require antenna structure registration under 47 CFR Part 17;

(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).

2. *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.

SECTION II: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Section 16-303 of the State College Borough streets and sidewalks ordinance is hereby amended by adding the underlined text as follows:

f. Wireless Communications Facilities. Only Wireless Communications Facilities meeting the definition of a “Small Wireless Communications Facility,” as defined herein, shall be permitted in the Rights-of-Way. Such Small Wireless Communications Facilities shall comply with all applicable requirements of this Part D.

SECTION IV: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Section 16-304 of the State College Borough streets and sidewalks ordinance is hereby amended by removing the stricken text and adding the underlined text as follows:

- a. Application for Use Agreement. An Application for a Use Agreement from the Borough shall, at a minimum, contain the following, subject to additional information needed by the Borough, to understand the Application:
- (1) The Applicant's name. If however the Applicant is not also the proposed Grantee, all information shall be furnished for both.
 - (2) The names of the Applicant's officers and directors.
 - (3) The business address of the Applicant.
 - (4) The name and contact information of a designated contact for the Applicant.
 - (5) A description of the Communications System that the Applicant proposes to construct and areas to be served by it.
 - (6) The term of the Use Agreement proposed by the Applicant.

- (7) Whether the Applicant holds an existing authorization from the Borough or other legal authority to access the public Rights-of-Way in the Borough. (Explain)
 - (8) Whether the Applicant will have customers (wholesale or retail) within the Borough.
 - (9) Written statement that this Ordinance has been reviewed by Applicant; and, unless otherwise stated by Applicant that a term or condition in this Ordinance cannot be complied with by it, this Ordinance shall be deemed agreed to. If a term or condition cannot be complied with, Applicant will include a written description of reason(s) for non-compliance and the legal basis for such non-compliance with proposed alternatives for consideration by the Borough.
 - (10) Any additional information required by applicable state laws or Borough's Ordinances.
- b. Consideration of Application. Unless a shorter timeframe is required by Applicable Law, applicant may be evaluated according to the information included in an Application as required by § 16-304a above, and acted on by Borough within 90 days for Applicants with existing authority to access Rights-of-Way and 180 days for Applicants that do not have authority to access Rights-of-Way. The times start on the date an Applicant files an Application or other writing including certain minimum information which is set forth in § 16-304a of this Ordinance and deemed complete by the Borough. The Borough may reasonably suspend said time periods for action by the Borough after giving written notice to an Applicant that the Application is incomplete and stating therein the reasons for incompleteness. If the ninety/one-hundred-eighty-day time elapses without action by the Borough, the Applicant is automatically granted an interim Use Agreement based on the Application submitted. The Borough may reasonably extend the said time periods for action by it on an Application after giving written notice with specificity to an Applicant if additional information is needed and of the extension of time for review required.
- c. Confidential Information. To the extent allowed by Applicable Law, or proprietary information, will be confidential, but Borough has the right to disclose to governmental agencies having requisite governmental or judicial authority provided that the Borough has given the Grantee prior written notice of impending disclosure and the Grantee have a reasonable opportunity to seek confidential status or protective order or other such appropriate remedy.
- d. Completed Application. A completed Application along with an Application Processing and Review Fee shall be submitted to the Borough. The Application Processing and Review Fee shall be set by Resolution of Borough Council and may be amended from time to time. An Applicant will be assessed an additional Application Processing and Review Fee at the end of the review process should the Borough's actual costs of reviewing the application exceed the Application Processing and Review Fee. This Application Processing and Review Fee will be equal to 100% of Borough's costs (including administration overhead, legal, consulting, etc.) for the review and processing of the Application and granting a Use Agreement. Upon approval of an Application and written acceptance of the Borough's authorization by an Applicant, the Application Processing and Review Fee shall be credited against the Applicant's annual Rights-of-Way compensation.

SECTION III: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Section 16-307 of the State College Borough streets and sidewalks ordinance is hereby amended by removing the stricken text and adding the underlined text as follows:

h. Small Wireless Communications Facilities. The following regulations shall apply to Small Wireless Communications Facilities:

(1) Location and development standards.

(a) Small WCFs in the public ROW requiring the installation of a new Wireless Support Structure shall not be located in front of any building entrance or exit.

(b) All Small WCFs shall comply with the applicable requirements of the Americans with Disabilities Act and all Borough Code requirements applicable to streets and sidewalks.

(2) Non-conforming Wireless Support Structures. Small WCF shall be permitted to collocate upon non-conforming Telecommunications Tower and other non-conforming structures. Collocation of WCF upon existing Telecommunications Tower is encouraged even if the Telecommunications Tower is non-conforming as to use within a zoning district.

(3) Standard of care. Any Small WCF shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, or to the industry standard applicable to the structure. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or any property in the Borough.

(4) Historic Buildings. No Small WCF may be located within one hundred (100) feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within a historic district, or is included in the official historic structures list maintained by the Borough.

- (5) Wind and ice. All Small WCF shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.
- (6) Aviation safety. Small WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- (7) Public safety communications. Small WCF shall not interfere with public safety communications or the reception of broadband, television, radio, or other communication services enjoyed by occupants of nearby properties.
- (8) Radio frequency emissions. A Small WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (9) Time, Place and Manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.
- (10) Accessory Equipment. Small WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Borough.
- (11) Graffiti. Any graffiti on the Wireless Support Structure or on any Accessory Equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the Borough.
- (12) Design standards. All Small WCF in the Borough shall comply with the requirements of the Borough "*Small Wireless Communications Facility Design Manual*." A copy of such shall be kept on file at the Borough Office.
- (13) Timing of Approval.

- (a) Within ten (10) calendar days of the date that an application for a Small WCF is filed with the Borough, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application.
 - (b) Within sixty (60) days of receipt of an application for Collocation of a Small WCF on a preexisting Wireless Support Structure, and subject to applicable tolling procedures, the Borough shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
 - (c) Within ninety (90) days of receipt of an application for a Small WCF requiring the installation of a new Wireless Support Structure, and subject to applicable tolling procedures, the Borough shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (14) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (a) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
 - (b) The operations of the Borough or other governmental entity in the Right-of-Way;
 - (c) Vacation of a street or road or the release of a utility easement; or
 - (d) An emergency as determined by the Borough.

SECTION IV: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Section 16-311 of the State College Borough streets and sidewalks ordinance is hereby amended by removing the stricken text and adding the underlined text as follows:

- c. Communications System - Wireless Use Fee. For each Small Wireless Communications Facility installed in the Rights-of-Way, the Grantee shall pay an annual Wireless Use Fee. The Wireless Use Fee shall be set by Resolution of Borough Council and may be amended from time to time. ~~Wireless Communications Facilities installed in the Rights-of-Way, the Grantee shall pay an annual Wireless Use Fee of \$1,200. In addition, when the number of Support Structures utilized exceeds three, then, in addition to the annual Wireless Use Fee, the Grantee shall pay a per structure Wireless Use Fee of \$400 for each additional Support Structure.~~
- d. Combined Wireline and Wireless System. For a Communications System using combined Wireline and Wireless Communications Facilities, a Use Fee shall be the higher of the above § 16-311b and c amount as calculated annually by the Borough to the extent permitted under state and federal law.
- e. Rental Agreement Fee.
 - (1) For Wireless Communications Facilities that do not meet the definition of a Small Wireless Communications Facility located on Borough-owned Support Structures in the Rights-of-Way, the Grantee must also obtain a Rental Agreement(s) and pay the Borough for each Borough-owned Support Structure utilized an additional fee of \$500 per Borough-owned Support Structure as the applicable Rental Agreement Use Fee.
 - (2) For Small Wireless Communications Facilities located on Borough-owned Support Structures in the Rights-of-Way, the Grantee must also obtain a Rental Agreement(s) and pay the Borough an additional fee for each Borough-owned Support Structure utilized. This fee shall be set by Resolution of Borough Council and may be amended from time to time.
 - (3) The Rental Agreement Use Fee shall be due and payable at the time a Rental Agreement is issued for new Borough-owned Support Structures utilized in a given year, and with each annual Rental Agreement Use Fee required by this section, the Grantee shall pay the Rental Agreement Use Fee based on the number of Borough-

owned Support Structures being utilized at the time the annual Rental Agreement Use Fee is due. There shall be no proration of the Rental Agreement Use Fee.

SECTION V. Amendment to Section 19-201, “General Definitions”

Section 19-201 of the State College Borough Zoning Ordinance is hereby amended by repealing the definitions of “Antenna,” “Monopole,” “Telecommunication Facility,” “Telecommunication Facility Building,” and “Tower” and adding the following definitions to the “Definitions” section:

1. *Accessory Equipment*—any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. 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.
2. *Antenna* — an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.
3. *Collocation*—the mounting of one or more WCFs, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure.
4. *Emergency*—a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.
5. *Equipment Compound*—an area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.
6. *FCC*—Federal Communications Commission.
7. *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, or expansion does not substantially change the physical dimensions of the wireless support structure.
8. *Non-Tower Wireless Communications Facility (Non-Tower WCF)*—Wireless communications facilities collocated on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower. This term includes the replacement of an existing structure with a similar structure that is required to support the weight of the proposed WCF.

9. *Person*—individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania, provided that “Person” does not include or apply to the Borough, or to any department or agency of the Borough.
10. *Replacement* -- the replacement of existing wireless communications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless communications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.
11. *Small Wireless Communications Facility* -- A wireless communications facility that meets the following criteria:
 - (1) 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 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.
 - (4) The facilities do not require antenna structure registration under 47 CFR Part 17;
 - (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).
12. *Stealth Technology*—camouflaging methods applied to wireless communications facilities and accessory equipment which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to

match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

13. *Telecommunications Tower* — any structure that is used for the primary purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, and the accompanying Antenna and Accessory Equipment.
14. *WBCA* - Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1 *et. seq.*)
15. *Wireless* — transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
16. *Wireless Communications Facility (WCF)*— an antenna facility or a wireless support structure that is used for the provision of wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
17. *Wireless Support Structure*—a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service (whether on its own or comingled with other types of services).

SECTION VI: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Section 19-2001(e) of the State College Borough zoning ordinance is hereby repealed in its entirety and replaced with a new Section 19-2001(e) entitled and provided for as follows:

Section 19-2001(e): Wireless Communications Facilities

1. Purposes.

- A. The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in the Borough of State College (referred to herein as the “Borough”). While the Borough recognizes the importance of wireless communications facilities in providing high quality communications service to its residents, the Borough also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities through the standards set forth in the following provisions.
- B. By enacting these provisions, the Borough intends to:
 - (1) Accommodate the need for wireless communications facilities while regulating their location and number so as to ensure the provision of necessary services;
 - (2) Provide for the managed development of wireless communications facilities in a manner that enhances the benefits of wireless communication and accommodates

the needs of both Borough residents and wireless carriers in accordance with federal and state laws and regulations;

- (3) Establish procedures for the design, siting, construction, installation, maintenance and removal of both telecommunications towers and non-tower based wireless communications facilities in the Borough, including facilities both inside and outside the public rights-of-way;
- (4) Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, small wireless communications facilities, cable Wi-Fi and other wireless communications facilities;
- (5) Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish and by requiring that competing providers of wireless communications services collocate their commercial communications antennas and related facilities on existing towers;
- (6) Promote the health, safety, and welfare of the Borough's residents.

2. General and Specific Requirements for Non-Tower Wireless Communications Facilities.

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

- (1) Permitted in all zones subject to regulations. Non-Tower WCF are permitted by right outside of the public rights-of-way in all zones subject to the restrictions and conditions prescribed by this Section 19-2001(e)(1) and generally applicable permitting by the Borough.
- (2) Eligible Facilities Request. WCF Applicants proposing a Modification to an existing WCF that does not Substantially Change the dimensions of the underlying structure shall be required only to obtain a building permit from the Borough Building Code Official. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.
- (3) Non-conforming Wireless Support Structures. Non-Tower WCFs shall be permitted to Collocate upon non-conforming Telecommunications Tower and other non-conforming structures. Collocation of WCF upon existing Telecommunications Towers is encouraged even if the Telecommunications Tower is non-conforming as to use within a zoning district.
- (4) Standard of care. Any Non-Tower WCF shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code,

National Electrical Safety Code, National Electrical Code, or to the industry standard applicable to the structure. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or any property in the Borough.

- (5) Wind and ice. All Non-Tower 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.
- (6) Aviation safety. Non-Tower WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- (7) Public safety communications. Non-Tower WCF shall not interfere with public safety communications or the reception of broadband, television, radio, or other communication services enjoyed by occupants of nearby properties.
- (8) Radio frequency emissions. A Non-Tower WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (9) Removal. In the event that use of a Non-Tower WCF is to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF, or portions of WCF, shall be removed as follows:
 - (a) All abandoned or unused WCFs and Accessory Equipment shall be removed within sixty (60) days of the cessation of operations at the site unless a time extension is approved by the Borough.
 - (b) If the WCF or Accessory Equipment is not removed within sixty (60) days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
- (10) Insurance. Each Person that owns or operates a Non-Tower WCF shall annually provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Non-Tower WCF.

(11) Indemnification. Each Person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Non-Tower WCF. Each Person that owns or operates a Non-Tower WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Non-Tower WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

(12) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

- (a) The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.
- (b) Such maintenance shall be performed to ensure compliance with applicable structural safety standards and radio frequency emissions regulations.
- (c) All maintenance activities shall conform to industry maintenance standards.

(13) Timing of Approval.

- (a) Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Borough, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application.
- (b) Within ninety (90) days of receipt of a complete application for a Non-Tower WCF on a preexisting Wireless Support Structure that Substantially Changes the Wireless Support Structure to which it is attached, and subject to applicable tolling procedures, the Borough shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (c) Within sixty (60) days of receipt of a complete application for a Non-Tower WCF on a preexisting Wireless Support Structure that does not Substantially Change the Wireless Support Structure to which it is attached, and subject to applicable tolling procedures, the Borough shall issue the required building and zoning permits authorizing construction of the WCF.

All applications for such WCF shall designate that the proposed WCF meets the requirements of an Eligible Facilities Request.

B. In addition to the requirements in Section 19-2001(e)(1) above, the following regulations shall apply to all Non-Tower WCF that Substantially Change the Wireless Support Structure to which they are attached, or that otherwise do not fall under the Pennsylvania Wireless Broadband Collocation Act:

- (1) Non-commercial usage exemption. Borough residents utilizing satellite dishes, citizen and/or band radios, and Antennae for the purpose of maintaining television, phone, and/or internet connections at their residences shall be exempt from the regulations enumerated in this Section 19-2001(e).
- (2) Small WCF Exemption. Non-Tower WCFs that meet the definition of a Small WCF shall be exempt from the requirements of this Section 19-2001(e)(1). Such Small WCF shall be subject only to applicable permitting and the requirements of Section 19-2001(e)(3) and Chapter XVI, Part D of the Borough Code.
- (3) Prohibited on Certain Structures. No Non-Tower WCF shall be located on single-family homes, duplexes, townhomes, or any accessory structure that is located on the same lot as a single-family home, duplex, or townhome.
- (4) Historic Buildings. No Non-Tower WCF may be located within one hundred (100) feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within a historic district, or is included in the official historic structures list maintained by the Borough.
- (5) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Non-Tower WCF, as well as related inspection, monitoring and related costs. Such permit fees shall be established by the Borough Fee Schedule and shall comply with the applicable requirements of the FCC.
- (6) Development Regulations.
 - (a) All Non-Tower WCF Applicants must submit documentation to the Borough justifying the total height of the WCF.
 - (b) If the WCF Applicant proposes to locate the Accessory Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
- (7) Design. Non-Tower WCF shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The

application of the Stealth Technology utilized by the WCF Applicant shall be subject to the approval of the Borough.

(8) Removal, Replacement and Substantial Change.

- (a) The removal and Replacement of Non-Tower WCF and/or Accessory Equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not Substantially Change the overall height of the WCF or increase the number of Antennae.
- (b) Any Substantial Change to a WCF shall require notice to be provided to the Borough, and possible supplemental permit approval as determined by the Borough.

(9) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough and/or its agents shall have the authority to enter the lease area of any property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

3. General and Specific Requirements for Telecommunications Towers.

A. The following regulations shall apply to all Telecommunications Towers that do not meet the definition of a Small WCF.

(1) Conditional Use Authorization Required. Telecommunications Towers are permitted by conditional use and at a height necessary to satisfy their function in the WCF Applicant's wireless communications system, subject to the requirements of this Section 19-2001(e)(2).

- (a) Upon submission of an application for a Telecommunications Tower and the scheduling of the public hearing upon the application, the WCF Applicant shall send via First Class Mail notice to all owners of every property within five hundred (500) feet of the proposed facility, advising of the subject matter and date of such hearing. Such notice shall be sent ten (10) days in advance of any such hearing. The WCF Applicant shall provide proof of the notification to the Borough Council along with the list of return receipts received.
- (b) Prior to the Borough Council's approval of a conditional use authorizing the construction and installation of Telecommunications Tower, it shall be incumbent upon the WCF Applicant for such conditional use approval to prove to the reasonable satisfaction of Borough Council that the WCF Applicant cannot adequately extend or infill its communications system by the use of equipment such as repeaters, Antenna(s) and other similar

equipment installed on existing structures, such as utility poles or their appurtenances and other available structures. The WCF Applicant shall further demonstrate that the proposed Telecommunications Tower must be located where it is proposed in order to serve the WCF Applicant's service area and that no other viable, less-intrusive alternative location exists. This test is also met when the WCF Applicant demonstrates that the WCF is being proposed to densify an existing wireless network, introduce new services or otherwise improve service capabilities.

- (c) The conditional use application shall include a site plan, drawn to scale, showing property boundaries, power location, total height of the Telecommunications Tower, guy wires and anchors, existing structures, elevation drawings, typical design of proposed structures, parking, fences, landscaping and existing uses on adjacent properties.
- (d) The conditional use application shall be accompanied by a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the WCF Applicant, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.
- (e) The conditional use application shall also be accompanied by documentation demonstrating that the proposed Telecommunications Tower complies with all state and federal laws and regulations concerning aviation safety.
- (f) Where the Telecommunications Tower is located on a property that is not owned by the WCF Applicant, the WCF Applicant shall present documentation to Borough Council that the owner of the property has granted an easement or other property right, if necessary, for the proposed WCF and that vehicular access will be provided to the facility.
- (g) Prior to the Borough's issuance of a zoning permit authorizing construction and erection of a Telecommunications Tower, a structural engineer licensed in the Commonwealth of Pennsylvania shall issue to the Borough a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided during the conditional hearings or at a minimum be made as a condition attached to any approval given such that the certification be provided prior to issuance of any zoning permit.
- (h) An application for a new Telecommunications Tower shall demonstrate that the proposed Telecommunications Tower cannot be accommodated on an

existing or approved structure or building. Borough Council may deny an application to construct a new Telecommunications Tower if the WCF Applicant has not made a good faith effort to mount the Antenna(s) on an existing structure. The WCF Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one (1) mile radius of the site proposed, sought permission to install an Antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- [1] The proposed Antenna and Accessory Equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - [2] The proposed Antenna and Accessory Equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - [3] Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - [4] A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- (i) The Conditional use application shall also be accompanied by documentation demonstrating that the proposed Telecommunications Tower complies with all applicable provisions of this Chapter.

(2) Development Regulations.

- (a) Telecommunications Tower shall not be located in, or within fifty (50) feet of an area in which all utilities are located underground, unless the WCF Applicant proves to the satisfaction of the Borough that installing its facility in such a location is necessary to provide Wireless service and that no other feasible alternative exists.
- (b) Telecommunications Tower are permitted outside the public Rights-of-Way in the following zoning districts by conditional use, subject to the requirements of this Chapter:
 - [1] General Commercial District
 - [2] Planned Industrial District
 - [3] Commercial Incentive District

- (c) Sole use on a lot. A Telecommunications Tower shall be permitted as a sole use on a lot, provided that the underlying lot meets the minimum requirements of the underlying zoning district.
- (d) Combined with another use. A Telecommunications Tower may be permitted on a property with an existing use, or on a vacant parcel in combination with another use, except residential, subject to the following conditions:

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

[2] Minimum lot area. The minimum lot shall comply with the requirements for the applicable zoning district and shall be the area needed to accommodate the Telecommunications Tower and guy wires, the equipment building, security fence, and buffer planting.

(3) Design Regulations.

- (a) Height. One hundred fifty feet, measured from the average natural grade of the approved facility area to the top point of the Telecommunications Tower, except for locations above elevation 1,400 feet as shown on the appropriate U.S. Geological Survey Topographic Quadrangle mapping, in which case, the maximum height shall be 50 feet or the average height of the trees, measured from the average natural grade of the approved facility area to the top point of the Telecommunications Tower. In addition, the Wireless Communications Facility must be of a concealed, camouflaged or "stealth" design that blends into the natural environment so as not to be seen or recognized. This includes "tree" poles, or architecturally-screened antenna that can be attached to existing structures other than towers. Lighting shall be prohibited from these concealed towers and/or antennas.
- (b) Visual Appearance and Land Use Compatibility. Telecommunications Tower shall employ Stealth Technology which may include the tower portion to be painted brown or another color approved by Borough Council or shall have a galvanized finish. All Telecommunications Tower 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. Borough Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; prevent a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible

extent; and encourage sound engineering and land development design and construction principles, practices and techniques.

- (c) Any proposed Telecommunications Tower shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's Antennae and comparable Antennae for future users.
- (d) Any Telecommunications Tower over forty (40) feet in height shall be equipped with an anti-climbing device, as approved by the manufacturer.
- (e) Minimum Setbacks. As required in the applicable zoning district, except for the following: No Telecommunications Tower shall be located closer than 200 feet or 110% of the proposed Telecommunications Tower height, whichever is greater, from any existing property line of any lot containing a residential use regardless of the zoning district in which the Telecommunications Tower and Accessory Equipment are located.

(4) Surrounding Environs.

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

(5) Fence/Screen.

- (a) A security fence (including security wiring) of approved design of not less than eight feet, and no greater than 10 feet shall completely enclose the WCF. A fence of not less than eight feet and not greater than 10 feet shall also completely enclose the anchored locations of guy wires, if used.
- (b) The applicant shall submit a landscaping plan. Sites in which WCF are located shall be required to comply with the following landscaping requirements:

[1] Landscaping and planting shall be provided for a minimum depth of 15 feet along all public rights-of-way abutting the lot where the telecommunications tower is located. COD (Corridor Overlay District) requirements shall take precedence over the fifteen-foot minimum landscaping requirement if a telecommunications facility is located within a COD.

[2] Landscaping, consisting of sight obscuring trees and shrubs in accordance with the Buffer Yard C requirements, as specified in Section 1927.b(6) of this chapter, shall be required at the perimeter of the security fences and the telecommunications facility. Existing wooded areas, tree lines and hedgerows adjacent to the facility shall be preserved and used to substitute or meet a portion of the buffer yard requirements.

(6) Accessory Equipment.

- (a) Ground-mounted Accessory Equipment associated or connected with a Telecommunications Tower shall not be located within fifty (50) feet of a lot in residential use.
 - (b) Accessory Equipment associated, or connected, with a Telecommunications Tower shall be placed underground or screened from public view using Stealth Technology. All ground-mounted Accessory Equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
 - (c) Either one single-story wireless communications equipment building not exceeding five hundred (500) square feet in area or its equivalent may be permitted for each unrelated company sharing commercial communications Antenna(e) space on the Telecommunications Tower outside of the public ROW.
- (7) Standard of Care. Any Telecommunications Tower shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, the Pennsylvania Uniform Construction Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any Telecommunications Tower shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or any property in the Borough.
- (8) Additional Antennae. As a condition of approval for all Telecommunications Tower, the WCF Applicant shall provide the Borough Council with a written commitment that it will allow at least two (2) other service providers to collocate Antennae on Telecommunications Tower where technically and economically feasible. To the extent permissible under state and federal law, the owner of a

Telecommunications Tower shall not install any additional Antennae without complying with the applicable requirements of this Section 119-40(A)(14).

- (9) **Eligible Facilities Request.** WCF Applicants proposing a Modification to an existing WCF that does not Substantially Change the dimensions of the underlying structure shall be required only to obtain a building permit from the Borough Building Code Official. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.
- (10) **FCC License.** Each Person that owns or operates a Telecommunications Tower shall submit a copy of its current FCC license, including the name, address, and Emergency telephone number for the operator of the facility.
- (11) **Inspection.** The Borough reserves the right to inspect any Telecommunications Tower to ensure compliance with the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough and/or its agents shall have the authority to enter the lease property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.
- (12) **Wind and ice.** Any Telecommunications Tower shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering department of the Telecommunications Industry Association (ANSI/TIA-222, as amended).
- (13) **Public Safety Communications.** No Telecommunications Tower shall interfere with public safety communications or the reception of broadband, television, radio, or other communication services enjoyed by occupants of nearby properties.
- (14) **Maintenance.** The following maintenance requirements shall apply:
 - (a) Any Telecommunications Tower shall be fully automated and unattended on a daily basis and shall be visited only for maintenance, repair, or replacement.
 - (b) Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the Borough's residents and utilize industry standard technology for preventing failures and accidents.
- (15) **Radio Frequency Emissions.** A Telecommunications Tower shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating

Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields,” as amended.

- (16) Signs. All Telecommunications Towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an Emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (17) Lighting. No Telecommunications Tower shall be artificially lighted, except as required by law. If lighting is required, the WCF Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Borough Secretary.
- (18) Noise. Telecommunications Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Borough Code, except in Emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (19) Storage. The storage of unused equipment, materials or supplies is prohibited on any Telecommunications Tower site.
- (20) Timing of Approval. Within thirty (30) calendar days of the date that an application for a Telecommunications Tower is filed with the Borough, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application. All applications for Telecommunications Towers shall be acted upon within one hundred fifty (150) days of the receipt of an application for the approval of such Telecommunications Tower, subject to applicable tolling procedures, and the Borough Council shall advise the WCF Applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the WCF Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.
- (21) Non-Conforming Uses. Non-conforming Telecommunications Tower which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location but must otherwise comply with the terms and conditions of this section. The Collocation of Antennae is permitted on non-conforming structures.
- (22) Removal. In the event that use of a Telecommunications Tower is planned to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:

- (a) All unused or abandoned Telecommunications Towers and Accessory Equipment shall be removed within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the Borough.
 - (b) If the WCF and/or Accessory Equipment is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - (c) Any unused portions of Telecommunications Tower, including Antennae, shall be removed within ninety (90) days of the time of cessation of operations. The Borough must approve all Replacements of portions of a Telecommunications Tower or Pole Facility previously removed.
- (23) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Telecommunications Tower, as well as related inspection, monitoring, and related costs. Such permit fees shall be established by the Borough fee schedule and shall comply with the applicable requirements of the FCC.
- (24) Insurance. Each Person that owns or operates a Telecommunications Tower shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Telecommunications Tower.
- (25) Indemnification. Each Person that owns or operates a Telecommunications Tower shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Telecommunications Tower. Each Person that owns or operates a Telecommunications Tower shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Telecommunications Tower. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

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

4. Regulations Applicable to all Small Wireless Communications Facilities.

(a) Small WCFs are permitted by administrative approval from the Borough of State College in the Rights-of-Way all Borough zoning districts, subject to the requirements of Chapter XVI, Part D and all applicable permitting as required by the Borough Code.

SECTION VII. Miscellaneous

A. Police powers. The Borough, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen, or impair the lawful police powers vested in the Borough under applicable federal, state and local laws and regulations.

B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Council of the Borough of State College.

ENACTED AND ORDAINED this _____ day of _____, 2021.

ATTEST:

STATE COLLEGE BOROUGH COUNCIL:

Sharon K. Ergler
Assistant Borough Secretary

Jesse L. Barlow
Council President

EXAMINED AND APPROVED as an Ordinance this _____ day of _____, 2021.

Ronald L. Filippelli
Mayor

THE BOROUGH OF STATE COLLEGE

**SMALL WIRELESS COMMUNICATIONS FACILITY
DESIGN MANUAL**

SECTION I. DEFINITIONS

The following terms are defined as follows:

1. *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 transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
2. *Antenna* – An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.
3. *Collocation* – The mounting of one or more wireless communications facilities, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a wireless communications facility on that structure.
4. *Decorative Pole* – A Borough-owned pole that is specially designed and placed for aesthetic purpose and on which no appurtenances or attachments, other than a small wireless Communications facility, lighting, banners, or municipal attachments have been placed or are permitted to be placed.
5. *Front Façade Area* – The area of the public right-of-way directly in front of a structure, identified by drawing a perpendicular line from each corner of the front of the structure to the public right-of-way.
6. *Prior Approved Design* – A design for a small wireless communications facility that has been reviewed and deemed to be in accordance with this Design Manual and approved for construction by the Borough.
7. *Small Wireless Communications Facility* -- A wireless communications facility that meets each of the following criteria:

(1) The wireless communications facility —

(i) is mounted on a Wireless Support Structure that is 50 feet or less in height,
or

(ii) is mounted on a Wireless Support Structure that is no more than 10 percent taller than other adjacent structures, or

- (iii) does not extend an existing Wireless Support Structure to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater; and
 - (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
 - (3) All wireless equipment associated with the wireless communications facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume.
 - (4) The wireless communications facility does not require antenna structure registration under 47 CFR Part 17;
 - (5) The wireless communications facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and
 - (6) The wireless communications facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).
8. *Stealth Technology*—camouflaging methods applied to wireless communications facilities and accessory equipment which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
9. *Underground District* – A zoning district in which all utility installations are required to be installed underground on a non-discriminatory basis.

SECTION II. GENERAL STANDARDS FOR SMALL WIRELESS COMMUNICATIONS FACILITIES

1. All Small WCFs shall be installed in and maintained in a workmanlike manner in compliance with the National Electric Safety Code, the National Electrical Code, the structural standards of the American Association of State Highway and Transportation Officials, and any other industry standard applicable to the WCF, as applicable.

2. All Small WCFs shall comply with the Americans with Disabilities Act guidelines adopted by the Borough and all applicable requirements relating to streets and sidewalks as established by Chapter XVI of the Borough Code.
3. Wireless Support Structures installed or replaced in order to accommodate attached Small WCFs shall not obstruct vehicular, pedestrian, or cyclist traffic or sight lines.
4. All Small WCFs shall comply with applicable federal and state standards regarding pedestrian access and movement.
5. All Small WCFs shall be designed and constructed in an effort to minimize aesthetic impact to the extent technically feasible. All applications for a Small WCF shall identify all design features intended to minimize aesthetic impact.
6. No Small WCFs shall extend beyond the boundaries of the rights-of-way unless approved on a case-by-case basis by the Borough Zoning Officer.
7. All Small WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Communications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.

SECTION III. ANTENNA AND ACCESSORY EQUIPMENT STANDARDS

1. Antenna Standards

- a. Any Antenna associated with a Small WCF shall not exceed three (3) cubic feet in volume.
- b. All pole-top Antennas shall be flush-mounted as closely to the top of the Wireless Support Structure as technically feasible.
- c. All Antennas shall be of a design, style, and color that matches the Wireless Support Structure upon which they are attached.
- d. Any necessary pole-top extension shall be of the minimum height necessary to achieve separation from the existing pole attachments.

- e. Any Antenna mounted on a lateral standoff bracket shall protrude no more than necessary to meet clearances from the pole and existing pole attachments.
- f. If mounted on an existing Wireless Support Structure, no Antenna shall impair the function of said structure.
- g. Antenna placement shall not materially impair light, air, or views from adjacent windows.

2. Accessory Equipment Standards

- a. Accessory Equipment shall not exceed twenty-eight (28) cubic feet in volume. Equipment utilized solely for mitigation of the aesthetic impact of the Small WCF or required for utility service shall not be included in the Accessory Equipment volume calculation.
- b. Accessory Equipment shall be mounted flush to the side of a Wireless Support Structure, or as near flush to the side of a Wireless Support Structure as technically feasible.
- c. Accessory Equipment shall be mounted so as to provide a minimum of eight (8) feet vertical clearance from ground level.
- d. Accessory Equipment shall be of a color that matches the Wireless Support Structure upon which such Accessory Equipment is mounted.
- e. All Accessory Equipment shall be contained within a single equipment shroud or cabinet. Such equipment shroud or cabinet shall be of the smallest dimensions technically feasible.
- f. All Small WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted shall be that required by the FCC or any other federal or state agency. All signage associated with a Small WCF shall be clearly shown in the application and shall be subject to approval by the Borough Zoning Officer.
- g. The placement of Accessory Equipment shall not materially impair light, air, or views from adjacent windows.

- h. No Accessory Equipment shall feature any visible lighting, including flashing indicator lights, unless required by state or federal law.

3. Wiring Standards

- a. Exposed wiring is prohibited on any Small WCF, Accessory Equipment, or Accessory Equipment enclosure.
- b. Transmission, fiber, power cables and any other wiring shall be contained within any Wireless Support Structure for which such concealment is technically feasible. If such wiring cannot be contained within the Wireless Support Structure, all wiring shall be contained within conduit or U-guard that is flush-mounted to the Wireless Support Structure.
- c. All wiring shall be installed tautly and without excessive slack or extra cable storage on the Wireless Support Structure.
- d. Any conduit or U-guard shall be of a color that matches the Wireless Support Structure to which the Small WCF is attached.
- e. Loops of extra wiring shall not be attached to any Wireless Support Structure.

SECTION IV. WIRELESS SUPPORT STRUCTURE STANDARDS

1. Replacement Wireless Support Structures

- a. The maximum height of any proposed replacement Wireless Support Structure shall be: 1) no more than ten (10%) percent taller than the tallest existing Wireless Support Structure in the public rights-of-way within a two hundred fifty (250) foot radius of the proposed Small WCF; or 2) fifty (50) feet above ground level, whichever is greater.
- b. Any replacement Wireless Support Structure shall be of comparable materials and design to the existing Wireless Support Structure being replaced except as required by the pole owner.
- c. Any replacement Wireless Support Structure shall be placed within a five (5) foot radius of the existing Wireless Support Structure being replaced.

- d. Any replacement Wireless Support Structure shall be designed to accommodate all uses that existed on the Wireless Support Structure being replaced. As part of an application for a Small WCF, the applicant shall provide documentation from a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the replacement Wireless Support Structure, Small WCF, and prior existing uses shall be structurally sound.
- e. [STREETLIGHT ARMS]
- [RESERVED]

2. New Wireless Support Structures

- a. The maximum height of any new Wireless Support Structure shall be: 1) no more than ten (10%) percent taller than the tallest existing Wireless Support Structure in the public rights-of-way within a two hundred fifty (250) foot radius of the proposed Small WCF; or 2) fifty (50) feet above ground level, whichever is greater.
- b. Any new Wireless Support Structure shall be of comparable materials and design to adjacent Wireless Support Structures except as required by the pole owner.
- c. To the extent technically feasible, no new Wireless Support Structure shall be installed:
 - i. In the Front Façade Area of any commercial or residential building;
 - ii. Within ten (10) feet of the edge of any driveway; or
 - iii. In the public rights-of-way directly opposite any driveway.
- d. Decorative Poles:
 - i. Decorative Poles shall be required:
 - 1. For the replacement of any existing Decorative Pole; and
 - 2. In any zoning district where no Wireless Support Structures are permitted and all utilities are required to be placed underground on a non-discriminatory basis.

- ii. For any replacement Decorative Pole, the new Decorative Pole shall match the existing Decorative Pole in shape, design, color, and material to the extent technically feasible.
- iii. No Small WCF shall be permitted on an existing Decorative Pole unless the applicant provides documentation showing that such Decorative Pole is the only technically feasible location for placement and that no suitable alternative sites exist.

SECTION V. APPROVAL

1. The Borough Zoning Officer shall reasonably determine whether a proposed Small WCF design complies with the requirements of this Design Manual.
2. Any requests for relief from the requirements of this Design Manual shall be considered on a case-by-case basis by the Borough Zoning Officer and shall be approved upon a determination by the Borough Zoning Officer that such relief is necessary to prevent the effective prohibition of wireless service pursuant to the rules of the Federal Communications Commission.
3. Upon approval of a design for a Small WCF requiring relief from the requirements of this Design Manual, such design shall be incorporated by reference into this Design Manual as a Prior Approved Design.

SECTION VI. PRIOR APPROVED DESIGNS

1. A record of Prior Approved Designs shall be kept on file at the Borough Zoning Office.

APPENDIX I

Small Wireless Communications Facility Design Checklist

The information detailed in the following checklist shall be included with any application for a Small Wireless Communications Facility:

| Item | Description | Included in Application? | |
|--------------------------|--|--------------------------|----|
| | | Yes | No |
| Cover Letter | <ul style="list-style-type: none"> The application shall include a cover letter detailing the location of the proposed site, all equipment being proposed, and a certification that the applicant has included all information required by the Borough Code. | | |
| Site Information | <ul style="list-style-type: none"> Depiction of the proposed site shall show all proposed equipment associated with the Small Wireless Communications Facility. The manufacturer and model, proposed location, and dimensions of each piece of equipment should be clearly shown. Before and after diagrams of the proposed site showing the dimensional changes shall be included. If the proposed Wireless Support Structure supports existing attachments, the depiction of the proposed site shall show the location and dimensions of all such attachments. If installation of a new Wireless Support Structure is being proposed, the depiction of the proposed site shall include the color, dimensions, material and type of Wireless Support Structure proposed. The depiction of the proposed site shall show the location of any existing structures within one hundred (100) feet of the proposed location, including but not limited to residential structures, commercial structures, light poles, traffic signals, traffic signage, and existing Wireless Support Structures. | | |
| Photo Simulations | <ul style="list-style-type: none"> Photo simulations shall depict the Small Wireless Communications Facility from | | |

| | | | |
|----------------|---|--|--|
| | <p>at least two locations near the proposed site.</p> <ul style="list-style-type: none"> • The photo simulations should reflect the proposed design and location of all Accessory Equipment associated with the Small Wireless Communications Facility. | | |
| Paint | <ul style="list-style-type: none"> • Accessory Equipment shall be painted a color that matches the Wireless Support Structure upon which such Accessory Equipment is mounted. • Application shall include the proposed paint color of any Accessory Equipment necessary to achieve aesthetic uniformity of the site. | | |
| Wiring | <ul style="list-style-type: none"> • All proposed wires associated with the Small Wireless Communications Facility shall be clearly shown. • A depiction and description of the concealment methods to be utilized for the wiring shall be included. • No exposed wiring is permitted. | | |
| Signage | <ul style="list-style-type: none"> • Signage shall be posted in a readily visible location and identify the owner's permit number and the name and phone number of a party to contact in the event of an emergency. • If required, FCC-mandated signage is permitted. Applicant shall identify such signage in its application. | | |

~~Vehicle Peddler~~Mobile Retail Food Facility Eating and Drinking License

§ 9-901**Definitions.**
[Ord. 1999, 9/17/2012]

The following terms, as used in this ordinance, shall be defined as follows:

BOROUGH

The Borough of State College, a Home Rule Municipality, Centre County, Pennsylvania.

MANAGER

The Borough Manager as appointed by the State College Borough Council pursuant to Section 502.1 of the Home Rule Charter of the Borough of State College.

Mobile Food Facility

Mobile units including food trucks, trailers, stick stands, carts, and other similar structures that are mobile/transitory by design from which food is stored, prepared, processed, distributed, or sold. A Mobile Food Facility is synonymous with the term Retail Food Facility as defined in PA State Regulation, Title 7, Chapter 46, PA Food Code.

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PENNSYLVANIA STATE REGULATION

The rules and regulations adopted by the Commonwealth of Pennsylvania, State Regulation, Title 7, Chapter 46, "Food Code Regulation" issued under the Retail Food Facility Safety Act of 2010¹ as now enacted and as may be revised from time to time.

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VEHICLE

A vehicle which is registered, inspected, and carries proof of financial responsibility (liability insurance) as required by the Commonwealth of Pennsylvania, Motor Vehicle Code, Title 75.

VEHICLE PEDDLER

Any person, firm, corporation, vendor, or operator within the Borough engaging in the peddling, selling, or taking of orders, either by sample or otherwise, of food items to be used or sold for immediate human consumption, in serving size packages using a ~~vehicle~~ mobile unit either in a stationary position on private or public property or in a moving position on public streets. This definition shall apply to any ~~vehicle peddler~~ mobile unit who dispenses food items to the public which are pre-

packaged, or are cooked, prepared and or assembled and served from within the ~~vehicle~~mobile unit.

[1]

Editor's Note: See 3 Pa.C.S.A. § 5701 et seq.

§ 9-902License Required.

[Ord. 1999, 9/17/2012]

Every person defined herein as a ~~Vehicle Peddler~~Mobile Food Peddler Peddler, whether acting on his own behalf, as principal, or as the employee or agent of another shall obtain a license as hereinafter provided:

a.

Application. Application for a ~~vehicle peddler~~Mobile Retail Food Facility ~~eating and drinking~~ license shall be on the forms provided by the Borough. The application shall be completed in its entirety and signed by the applicant. Each owner or operator shall make a separate application for each ~~vehicle~~mobile unit used for peddling. The owner or operator shall include sufficient information in the application about each employee operating in the Borough and shall file the application together with two photographs of the face of the applicant and each employee, accurately depicting the applicant's and employee's appearance, approximately two inches by three inches in size. Group or joint applications or licenses, or a license for fleet or multiple vehicles shall not be permitted, except as provided in § 9-902e. The Applicant shall be responsible for all processing fees associated with the application.

(1)

A facility plan for review shall be submitted with the initial application for a ~~vehicle peddler~~mobile retail food facility ~~eating and drinking~~ license.

(2)

Operators shall provide a certified copy of a contract as proof of using a grease rendering company (if applicable) within the facility plan which is contracted to dispose of used cooking grease.

(3)

Operators shall provide information within the facility plan concerning a potable water source and shall include a certified copy of a contract as proof of using a wastewater disposal company (if applicable) which is contracted to dispose of wastewater.

b.

Waiting Period For Action On The Application. A thirty-day waiting period, not including weekends or holidays, shall be required between the submission of the application for a ~~vehicle peddler~~mobile retail food facility eating and drinking license and action on it by the Borough.

(1)

During the thirty-day waiting period, the Borough shall, in all cases, where items are proposed to be sold for human consumption, review and approve the facility plan, including equipment to be used for the operation in retail sales and ensure compliance with the Commonwealth of Pennsylvania, State Regulation, Title 7, Chapter 46, "Food Code Regulation" issued under the Retail Food Facility Safety Act of 2010. The Borough shall also verify the vehicle identification number and current matching registration and proof of current financial responsibility (liability insurance) for any vehicle used for the peddling of food items. The vehicle owner shall also provide, in all cases, proof of current business liability insurance associated with the product or products provided for sample or being sold for human consumption.

(2)

After the thirty-day waiting period, the Borough's ~~Chief Financial Officer~~Finance Department shall approve or deny the issuance of a ~~vehicle peddler~~mobile retail food facility eating and drinking license. The Borough's ~~Chief Financial Officer~~Finance Department shall have the right to deny any application for just cause.

c.

Responsibility For Payment Of Taxes. ~~Vehicle Peddlers~~Mobile Retail Food Facilities or any persons who conduct business activities on their behalf shall be subject to the provisions of the Earned Income and Net Profits Tax and Local Services Tax, as defined under the Local Tax Enabling Act, amended by Act 32 of 2008. Each person must be registered with the applicable local tax office and comply with local withholding requirements and/or self-reporting requirements. In addition to meeting their local tax obligations, vendors and persons who are conducting business on their behalf must also comply with the Pennsylvania and Federal tax regulations.

d.

License. The license shall contain the information required on the application along with the expiration date and one of the photographs that were submitted

with the application shall be attached. The license shall also contain the vehicle registration plate number and state of issue. The license shall be displayed in a conspicuous location on or within the ~~vehicle~~mobile unit at all times during operation.

e.

Term of License and fees. The term for a ~~vehicle peddler~~mobile retail food facility eating and drinking license shall be specified on the license and shall not exceed one calendar year. The fee for a ~~vehicle peddler~~mobile retail food facility eating and drinking license and associated fees shall be set by resolution of Council from time to time.

(1)

A not-for-profit organization shall provide proof of tax exemption status as required under the Retail Food Facility Safety Act of 2010, as may be revised from time to time. The not-for-profit organization shall be charged an application processing fee by the Borough as set by resolution of Council from time to time and an hourly rate for inspection by the Borough for compliance with Title 7, Chapter 46, "Food Code" Regulation.

f.

Exceptions. The Borough's ~~Finance Department~~Chief Financial Officer shall have the right to permit an individual or a group application for a temporary ~~vehicle peddler eating and drinking~~mobile retail food facility license under the following conditions:

(1)

The ~~vehicle peddler~~mobile retail food facility eating and drinking license is in connection with an event or activity sponsored by or conducted by the Borough of State College, the State College Area School District, the Downtown State College Improvement District, Centre Region Parks and Recreation or the Pennsylvania State University.

(a)

In the event that the ~~vehicle peddler~~mobile retail food facility~~facility eating and drinking~~ license is approved under this section, the vendor may be granted relief from the requirements of § 9-908.

§ 9-903 **Suspension or Revocation of License.**

[Ord. 1999, 9/17/2012]

The Borough's ~~Chief Financial Officer~~ Finance Department is authorized to suspend or revoke, for a specific period of time, any license issued under this ordinance under the following circumstances:

a.

If the licensee or others named in the license are convicted of a felony or misdemeanor during the ~~period~~ period, the license is in effect.

b.

If the ~~Chief Financial Officer~~ Finance Department determines the status of the authenticity of the ~~Vehicle-Mobile Food -Peddler~~ Peddler has changed.

c.

If it is determined that the ~~Vehicle-Mobile Food -Peddler~~ Peddler has given false information on the application.

d.

If unsafe or harmful goods are being sold to the public.

e.

If it is determined that the approval of the food handling permits has been suspended or revoked.

§ 9-904 **Appeals.**

[Ord. 1999, 9/17/2012]

Any person whose application for a ~~vehicle-peddler-eating-and-drinkingmobile retail food facility~~ license is disapproved by the ~~Chief Financial Officer~~ Finance Department, or whose license is suspended or revoked by the ~~Chief Financial Officer~~ Finance Department for an administrative reason, or for violation of any state law or ordinance within this Borough may appeal such action to the Borough Manager. Such appeal shall be in writing and signed by the person and filed in the office of the Borough Manager within 10 days of the date of such action appealed from. The Manager shall conduct a hearing within 30 days of the filing of such appeal and shall notify such person, by written letter mailed to the permanent address of the person shown on the application, such mailing to occur 15 days or more prior to the scheduled hearing. In lieu of mailing such notice, it may be delivered personally to such person. Following the hearing,

the Manager shall affirm the action appealed from or reverse such action or may modify the action of the ~~Chief Financial Officer~~Finance Department. The ~~Chief Financial Officer~~Finance Department shall not participate in the making of such decision, but shall be permitted to testify or present evidence. Any person who disagrees with the Manager's decision may appeal such decision to the Pennsylvania Commonwealth Court.

a.

Food Code and Related Violations. Any person whose application for a ~~vehicle peddler eating and drinking~~mobile retail food facility license is suspended or revoked for violation of Commonwealth of Pennsylvania, Department of Agriculture, Title 7, Chapter 46, "Food Code Regulation" issued under the Retail Food Facility Safety Act of 2010 may appeal such action to the State College Board of Health within 10 days. Such appeal shall be in writing and signed by the person making the appeal and filed in the office of the Director of the Department of ~~Ordinance Enforcement and Public Health~~Neighborhood and Community Services. The State College Board of Health shall conduct a hearing within 30 days of the filing of such appeal and shall notify such person by written letter mailed to the permanent address of the person shown on the application, such mailing to occur 15 days or more prior to the scheduled hearing. In lieu of mailing such notice, it may be delivered personally to such person. The State College Board of Health may, by majority vote of members present, affirm, reverse or modify the action to suspend or revoke the permit. The decision rendered by the State College Board of Health shall be final.

§ 9-905 Requirements For ~~Vehicle Peddlers~~Mobile Food Peddlers Selling Items Used For Human Consumption.

a.

Certified Food Employee On Duty. Each newly licensed ~~Vehicle-Mobile Food~~ Peddler selling items used for human consumption shall have, within their employ and prior to operation, at least one certified food employee who is available and with the ~~vehicle-unit~~ at all times or available by phone. ~~Vehicle Mobile Food~~ Peddlers that sell only commercially pre-packaged, ~~or non-potentially hazardous non-potentially hazardous~~ food shall be exempt from this requirement.

b.

Used Cooking Grease And Waste Water Disposal. Each ~~Vehicle-Mobile Food~~ Peddler shall be responsible for the proper disposal of used cooking grease and wastewater (if applicable) and shall have a company under contract to comply with the terms of this Ordinance. A vehicle peddler eating and drinking

license may be immediately revoked for the improper disposal of cooking grease or wastewater.

c.

Refuse And Recyclable Materials. Operators shall provide their own containers for the disposal of refuse and recyclable materials generated as a result of retail sales and shall not use trash receptacles provided for public use on any sidewalk or right-of-way within the Borough nor shall they use privately owned dumpsters within the Borough. Commercial solid waste generated within the Borough and disposed of in any residential area within the Commonwealth of Pennsylvania is prohibited. Operators may use any community shared dumpster for the disposal of solid waste. Recycled corrugated cardboard receptacles provided at various locations throughout the commercial district may be used for cardboard recycling.

d.

~~Vehicle Peddler Paper Product Identification. All paper products including cups, wrappers, waxed paper, foil, cardboard and Styrofoam or other similar disposable containers used to facilitate the retail sales of items or goods shall bear the vehicle peddler's business name and/or logo (if applicable).~~ Each vehicle peddler shall be responsible for the cleanup of any refuse or litter ~~bearing his/her identification~~ which may be deposited by the operator or clientele in their area of operation.~~on any sidewalk or street within the Borough.~~

e.

Motor Vehicle Compliance. Each vehicle used for peddling and operating within the Borough shall bear a valid registration plate, valid inspection sticker and proof of financial responsibility (vehicle liability insurance) in accordance with Title 75, the Pennsylvania Motor Vehicle Code.

[§ 9-906 Location of Operations](#)

[Mobile Food Peddlers may conduct business in any Commercial Zoning Districts. Operation of a Mobile Retail Food Facility may be permitted in any other zoning district, including a residential zoning district, on public or private property, with the submission of a Special Event Application and subject to approval by Borough Council and/or the Borough Manager.](#)

§ 9-90~~76~~**Hours of Operation.**

[Ord. 1999, 9/17/2012]

~~Vehicle~~ **Mobile Food** Peddlers may conduct business between the hours of ~~97:00~~ a.m. and ~~10:00~~~~11:00~~ p.m. with the exception of any Commercial Zoning Districts, in which there are no hourly restrictions.

~~**Commercial Zoning Districts**~~

~~There are no hourly operating restrictions in the commercial zoning districts.~~

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§ 9-90~~87~~**Special Requirements for ~~Vehicle~~ **Mobile Food** Peddlers.**

[Ord. 1999, 9/17/2012]

a.

~~Vehicle~~ **Mobile Food** Peddlers shall not occupy a stationary location on any public sidewalk, street or right-of-way, nor shall they conduct business through a window or over a counter which extends into a roadway laned for vehicle traffic. There shall be no interference with or blocking the movement of any pedestrians or vehicles by the ~~Vehicle~~ **Mobile Food** Peddler.

b.

~~Vehicle~~ **Mobile Food** Peddlers shall not remain in a stationary (non-moving) location at any time to solicit sales on any street within the Borough except when an actual sale is taking place. All sales shall be conducted from the street and along the curb. ~~Vehicle~~ **Mobile Food** Peddlers shall be prohibited from parking on any public sidewalk or right-of-way within the Borough.

c.

If a pushcart is used by any Mobile Food Peddler it shall not be permitted to remain in a fixed (non-moving) location on any public sidewalk or street at any time except when an actual sale is taking place.

de.

~~Vehicle~~ **Mobile Food** Peddlers shall not be permitted to park and conduct business at any parking meter or in any loading zone, handicapped parking space, commuter zone parking space, or on any public street or in any alley or other location deemed hazardous by the Borough.

de.

~~Vehicle-Mobile Food~~ Peddlers shall not make or cause to be made any loud noise to attract attention except for an initial identifiable repetitive jingle to announce the vehicle arrival and location. ~~Vehicle-Mobile Food~~ Peddlers shall comply with the requirements of the Noise Control Ordinance as defined in the State College Borough Code, Chapter V, Part A, § 5-103.

ef.-

No temporary retail sales shall be conducted within the area designated by Council for the conduct of the Central Pennsylvania Festival of the Arts or the conduct of First Night during those periods designated by Council for the conduct of these activities except for those approved by the Arts Festival Organization. The Arts Festival Organization shall have the authority to approve or disapprove ~~vehicle-mobile food~~ peddling operations within the designated Arts Festival or First Night areas and may limit the number of ~~Vehicle-Mobile Food~~ Peddlers and further restrict hours of operation within these designated areas.

fg.

~~Vehicle-Mobile Food~~ Peddlers shall be prohibited from conducting business in any parking garage, parking deck or public metered parking lot within the Borough.

hg.

Signage concerning menus and other advertisements associated with a ~~Vehicle Mobile Food~~ Peddler shall be limited to the length of the vehicle times two square feet and shall be located on the vehicle. Sandwich board, hand billing or other advertisements are prohibited. Additional advertisement on top of a vehicle shall be limited to one sign, a maximum length of the vehicle, and shall extend no higher than two feet above the main portion of the vehicle roof. No sign attached to a vehicle is permitted to hang over or protrude onto any public sidewalk, street, alley, or right-of-way within the Borough. No sign shall move by electronic or mechanical means, flash or include moving illumination. No sign shall be permitted which is determined to be a hazard to public safety.

i.

~~Vehicle Peddlers may not operate in a municipal park without the submission of a Special Event Application and subject to approval by Borough Council and/or the Borough Manager. a valid Special Activities permit issued from Borough Council or the Borough Manager.~~

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§ 9-90**98** **Location Of ~~Vehicle-Mobile Food~~ Peddlers On Private Property.**

[Ord. 1999, 9/17/2012]

~~Vehicle-Mobile Food~~ Peddlers may operate on private property within the commercial and commercial incentive zoning districts of the Borough under the following conditions:

a.

Written permission shall be obtained from the property owner and/or the property lessee.

b.

In addition to a ~~vehicle-peddler eating and drinking~~mobile food facility license, a zoning permit shall be required prior to operation on any privately owned property should a ~~Vehicle-Mobile Food~~ Peddler use the location for retail sales for seven or more consecutive days or a lease is established with the property owner. The zoning permit fee shall be in addition to a ~~vehicle-peddler eating and drinking~~mobile food facility license fee and shall be set by resolution of Council from time to time.

~~**c.**~~

c.

Mobile Food Peddlers may occupy a fixed location in the setback areas of a building or lot, provided they have the permission of the affected property owner to do so. Such permission shall be in writing and must be carried by the Mobile Food Peddler when in such a fixed location and available for inspection by the municipal officers.

~~All other licensing and permitting provisions of this Ordinance shall apply.~~

d.

~~Vehicle-Mobile Food~~ Peddlers shall be permitted to operate at a construction site on private property during those hours in which actual construction work is taking place provided the ~~Vehicle-Mobile Food~~ Peddler has permission from the site manager or foreman.

~~**e.**~~

All other licensing and permitting provisions of this Ordinance shall apply.

§ 9-9109 **Restrictions For ~~Vehicle~~ Mobile Food Peddlers Operating On Private Property.**

[Ord. 1999, 9/17/2012]

a.

The ~~Vehicle~~ Mobile Food Peddler shall be fully contained within the property of the owner granting permission and shall not extend or operate on any portion of a public sidewalk, street, alley or other public property or right-of-way.

b.

Signage concerning menus and other advertisements associated with a ~~Vehicle~~ Mobile Food Peddler shall be limited to the length of the vehicle times two square feet and shall be located on the vehicle.

c.

One sandwich board sign shall be permitted providing such sign fits in the approved property where the ~~vehicle-mobile food~~ peddler is located. The maximum size of a sandwich board sign shall not exceed an area of 10 square feet on each face of the sign.

d.

Hand billing or other advertisements shall be prohibited.

e.

Additional advertisement on top of a vehicle shall be limited to one sign, a maximum length of the vehicle, and shall extend no higher than two feet above the main portion of the roof.

f.

No sign attached to a vehicle is permitted to hang over or protrude onto any public sidewalk, street, alley or right-of-way within the Borough.

g.

No sign shall move by electronic or mechanical means, flash or include moving illumination.

h.

No sign shall be permitted which is determined to be a hazard to public safety.

i.

~~A Vehicle Peddler shall be prohibited from operating on private property in any residential zoning district of the Borough.~~ Operation of a Mobile Food Facility

may be permitted in a residential zoning district on private property with the submission and approval of a Special ~~Event Application~~Activity Request to Borough Council and/or the Borough Manager.

§ 9-91~~10~~**19** **Inspection.**

[Ord. 1999, 9/17/2012]

No person, firm, corporation, owner, operator, employee or associate of a ~~vehicle~~Mobile Food pPeddler licensed under this ordinance shall resist or interfere with an authorized representative of the Borough in the performance of his or her duty while conducting an inspection for compliance with this ordinance or any law relating to Food Code Regulation, or ordinance relating to retail dealer licensing. An annual inspection shall be required for vehicle peddlers selling items used for human consumption.

§ 9-91~~24~~**24** **Fines and Penalties.**

[Ord. 1999, 9/17/2012]

Any person who shall violate any provision of this ordinance and is found guilty shall be fined not less than \$300 nor more than \$1,000 for the first offense, and not less than \$600 nor more than \$1,000 for the second offense, and \$1,000 for the third and subsequent offense in any one-hundred-eighty-day period. Upon failure to pay such fine, the person shall be sentenced to jail for a term not to exceed 30 days for each offense.

a.

A penalty provided for under this ordinance may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

b.

Each act of violation and every day upon which such violation occurs shall constitute a separate offense.

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ORDINANCE ____

AN ORDINANCE OF THE BOROUGH OF STATE COLLEGE, PENNSYLVANIA ESTABLISHING A COMMUNITY OVERSIGHT BOARD APPOINTED BY BOROUGH COUNCIL TO CONDUCT VARIOUS OVERSIGHT OF THE STATE COLLEGE POLICE DEPARTMENT.

Whereas, The State College Borough and the State College Police Department are committed to building trust and positive relationships with all segments of the community; and,

Whereas, Historically, across the nation, policing has been used as a mechanism for social control by means including racial bias, disparities in police use of force, and the impacts of officer-involved shootings and other violent encounters with law enforcement officers; and,

Whereas, This fact, combined with ongoing racial discrimination in America today, creates distrust and tension between marginalized populations and law enforcement; and,

Whereas, The Borough cannot achieve this end without addressing our national history of using the police as a tool to reinforce systems of racial inequity; and,

Whereas, The formation of the Independent Community Police Oversight Board is a necessary step in reframing the relationship that the residents of State College have with the police and an investment in the smart, equitable, community-oriented policing that the State College Police Department strives for and that our community deserves.

Section 1. Establishment of Community Oversight Board for the Borough of State College Police Department.

There is hereby established a Community Oversight Board for the State College Police Department.

Section 2. Definitions.

For purposes of the ordinance, the following terms shall have the following defined meanings:

- a. *Board* means the Community Oversight Board.
- b. *Department* means the State College Police Department.
- c. *Ordinance* means the borough ordinance that created the Board, as amended.
- d. *Policy* means any policy or practice of the Department and any other policy or practice of the Borough or any of its agencies to the extent that it governs or otherwise bears on the work of the Department.

- e. *Police service area* means the municipalities of State College Borough, College Township, and Harris Township.

Section 3. Purpose - Scope of Oversight.

The Board has all of the following purposes:

- a. To provide independent analysis of problems and underlying issues and causes to ensure that Department policies and practices support human and civil rights and work is being done to reduce or eliminate systemic bias, prevent misconduct, strengthen police-community relations, and build partnerships that promote trust and understanding between law enforcement and the community.
- b. To create an environment which allows for better communication, understanding, and relations between the Department and the community.
- c. To provide oversight for the Department with regard to the provision of police services in the police service area as defined, with the goal that the entire community—meaning everyone who lives, works, studies in, or visits State College—may live safely and experience equitable treatment in any interactions with the police.
- d. Upon completion of its first two years of operation, the Board shall conduct a review of the organization and activities of the Board, seek stakeholder and community input, and provide a report to the State College Borough Council including any recommendations for changes to the scope, authority and power, structure, duties, and membership commitment responsibilities of the Board.

Section 4. Authority and Power.

- a. The Board is authorized to receive, process, and investigate complaints about the Department from members of the community through a Civilian Complaint Process. The Board can facilitate resolution of these complaints, support individuals seeking to file formal complaints, and engage in further inquiries leading to policy recommendations.
- b. The Board is authorized to conduct oversight functions and make recommendations to Borough Council, Borough Manager, and the State College Police Department regarding law enforcement policies, practices, and procedures. The Department shall provide the Board with timely and unfettered access to necessary information within limits imposed by law, and provide timely, written, and detailed responses to Board recommendations.
- c. Oversight shall include:
 - i. Data Analysis – access to, collection of and examination by the Board of relevant information on all complaints or allegations of officer misconduct, including but not limited to:

- Department policies;
 - All complaints submitted to the Department;
 - Proposed policy changes; and
 - Other information used to track performance measures and assess outcomes related to police practices and community perceptions.
- ii. Monitoring – quarterly policy reviews with the Department by the Board Chair and two Board members of redacted summaries of all incidents involving use of force and any complaints or allegations of officer misconduct received by the Department or through the Board, in order to ensure fairness and consistency, and actions consistent with the Department’s disciplinary protocol. Upon completion of this review, the information will be formally submitted to Borough Council and made public.
- iii. Auditing – Real time observation by the Borough staff assigned to the Board of internal affairs investigations by observing interviews, asking questions, and observing the overall direction of the Department’s disciplinary process and procedures.
- iv. Independent review of closed cases – investigation by an independent investigator of closed cases involving use of force resulting in serious injury or death when questions persist even after the auditing and monitoring functions have been completed. Investigations will occur at the conclusion of litigation if pursued and will be conducted for the purpose of making policy recommendations to the Council, the State College Police Department, and the Borough Manager.
- d. To increase transparency, the Board is authorized to recommend strategies to provide education and training in the community and to support outreach activities, to engage with stakeholders and community members, and to expand the information available to the public.
- e. The Board is authorized to develop and implement a communications plan to promote transparency, to convey community concerns to the Department, and to publish an annual report documenting the Board’s activities, findings, recommendations, and the Department responses to Board oversight.
- f. The Board is authorized to coordinate with existing Borough of State College Authorities Boards and Commissions (ABCs), The Pennsylvania State University, other Oversight Boards, other police department, and other community organizations to draw on their expertise to advance Board oversight.

Section 5. Nature of the Board.

The Board is established by the Borough Council. The Board will exercise its authority and judgment independent of Borough administration under the ordinance. The Board shall provide advice, through reports and recommendations to the Borough Council, the Borough Manager, and the Chief of Police, with respect to matters concerning the Department consistent with the

authority in this Ordinance. The creation and operation of the Board shall not impair the authority and responsibility of the Police Chief, the Borough Manager, and the Borough Council, as provided in the Borough Charter. Reports, recommendations, conclusions, and findings produced by or for the Board are not binding, factually or legally, on the Borough or any part thereof, including the Department, the Borough Manager, the Borough Solicitor, and the Borough Council.

Section 6. Board Membership and Requirements.

- a. The Board shall consist of nine (9) voting members appointed by State College Borough Council, none of whom are employed by or elected officials of the municipalities in the police service area; a Chairperson and vice chairperson will be selected annually from and by the Board members.
- b. Qualifications of all Board Members
 - i. Members must currently live in the police service area.
 - ii. Members must have demonstrated capacity for open mindedness and impartiality and a commitment to the civil rights of all affected parties.
 - iii. Members must commit to completing all of the training required for the position.
 - iv. Members must sign a confidentiality statement promising to maintain and protect the status of confidential information.
 - v. Members selected should reflect the broadest possible diversity with particular attention to categories of people who have suffered past institutional discrimination in terms of race, ethnicity, gender, gender identity, LGBTQ identity, history of incarceration, immigration or citizenship status, religious minorities, and persons from any other marginalized or underrepresented groups.
- c. Categories of Membership – Borough Council has a special interest in appointing persons with the following specific experience:
 - i. involved in community organizations related to serving persons in need.
 - ii. understanding or appreciation of role played by systemic racism in society.
 - iii. knowledge of law enforcement but not employed in a law enforcement position during the previous three years.
 - iv. background connected to behavioral health and/or intellectual disabilities.
 - v. knowledge or understanding of the experiences of children in State College area schools related to policing.
 - vi. Penn State student who lives in the police service area.
- d. Meetings – The Board shall hold, at a minimum, quarterly meetings.
- e. Terms - Terms for voting members shall be 3 years and shall be staggered so that approximately one-third ($\frac{1}{3}$) of the voting members' terms expire each year.
- f. Term limit - No person serving on the Board continuously for 9 years shall be eligible for reappointment, until the lapse of at least 3 years.

- g. Removal of Members – Borough Council may remove on their own or based on a recommendation from the Board any member for cause related to any of the following:
- i. Failure to complete required training.
 - ii. Failure to attend three consecutive meetings, or three meetings in a calendar year or failing to participate in the work of the Board.
 - iii. violation of confidentiality, failure to recuse in matter containing conflict of interest, failure to remain impartial, or other inappropriate action.
- h. Filling vacancies - If a seat on the Board becomes vacant, it shall be filled in accordance with Borough Council's practice on filling Authorities, Boards, and Commission vacancies.

Section 7. Board Training Requirements.

- a. Orientation - prior to participation in any Board meeting, a newly appointed member must complete an orientation process which includes:
 - i. an overview of Board policies and procedures.
 - ii. an overview of Department policies and procedures, including anti-bias-based policing and immigration.
 - iii. one ride-along with a Department officer (or equivalent experience under exceptional circumstances).
 - iv. following the initial appointments, any newly appointed Board member must attend one Board meeting as an observer prior to participating in any Board meeting.
- b. Initial Training -- within one year of initial appointment, Board members must complete a training program which includes:
 - i. participation in the Citizens Police Academy if academy is made available.
 - ii. information on the following topics, provided by Department and other local/national resources as appropriate.
 - Civil rights law, 4th Amendment, Pennsylvania use of force laws; and whether or how legal landscape is changing.
 - Critical race theory; implicit bias; cultural competency.
 - Department policies related to internal reviews of use of force incidents.
 - Department training practices, especially for use of force.
- c. Continuing Education – in addition to annual updates on topics addressed during the initial training, Board members may receive ongoing continuing education to include but not limited to additional Department ride-alongs, membership in NACOLE, and participation in trainings related the purpose of the Board based on available funding.

Section 8. Duties, Responsibilities, and Limitations.

- a. Civilian Complaint Process – Within six (6) months of the Board’s establishment and its initial first quarterly meeting, the Board shall develop a Civilian Complaint Process that is independent from any existing complaint process in the Department. This alternative means for filing a complaint does not replace or alter the Department Internal Affairs Section procedures for receiving and investigating complaints or allegations of officer misconduct. Complaints received through the Civilian Complaint Process that involve alleged officer misconduct shall be referred to the Department for investigation through the Department’s Internal Affairs process.
- b. This Civilian Complaint Process shall be detailed and clearly outline the procedures for receiving, processing, investigating, and adjudicating each complaint received. In preparing this specific process, the Board should reference the Ad Hoc Community Oversight Board Study Committee Report, including the recommendation that provides a detailed list of information that should be addressed in the Civilian Complaint Process.
- c. Oversight
 - i. Data analysis – The Board shall have access to, collect, and examine relevant information used to track performance measures and assess outcomes related to police practices and community perceptions. Dissemination of results would take place in a quarterly or annual report. Analysis of performance measures and outcomes include but are not restricted to the following:
 - Baseline measures (quantitative and qualitative), accountability standards, community, and police perceptions.
 - Metrics (demographics of officer and subject, behavioral and mental health as contributing factors, previous encounters, reasons for multiple deployments (Taser), injuries sustained); include predictive analytical techniques that focus on use of force in diverse populations.
 - Analysis of other relevant information, such as census or public health data.
 - ii. Monitoring - The Board Chair and two (2) Board members shall hold quarterly policy reviews with the Department to review redacted summaries of all incidents involving use of force involving any injuries and any complaints or allegations of officer misconduct received by the Department or through the Board’s established Civilian Complaint Process, in order to ensure fairness and consistency, and actions consistent with the Department’s disciplinary protocol.

Information to review includes, but is not restricted to:

- use of force and discharge of firearms, including closed cases involving serious injury or death.
- search & seizure; domestic violence; pursuit; prisoner detention & transportation management.
- race-bias concerns, as well as concerns of other types of bias.

- complaint history (early warning system/officer conduct, off-duty expectations, self-reporting of incidences, confidentiality & transparency).
 - budget, resources, and law enforcement responsibilities.
 - mental health and crisis intervention response.
- d. Education and Training – The Board may recommend strategies to provide education and training in the community to promote understanding of:
- i. diversity, inclusion, equity, immigration, implicit bias, systemic racism, and cross-cultural communication.
 - ii. legal procedures, community policing and procedural fairness.
 - iii. police procedures related to de-escalation strategies, handcuffing and restraints, and use of force, including use of tasers.
 - iv. behavioral and mental health, physical health, domestic violence.
 - v. other issues related to the mission and goals of the Board.
- e. Outreach and Community Engagement – The Board shall foster community engagement and conflict resolution through the following:
- i. supporting community organizations whose missions reflect Board objectives and goals.
 - ii. facilitating and/or supporting a truth and reconciliation process or transformative/restorative justice practices to address current and past community complaints as a non-punitive framework for resolution.
 - iii. Safeguarding the confidentiality of community participants and making it a priority to protect them from retaliation.
- f. Communications – The Board shall do the following:
- i. Develop a plan to keep the public informed of Board activities and to receive community feedback.
 - ii. Promote transparency by providing information to the public on law enforcement activities, including release of information and demographics related to use of force, taser use, body camera recordings, injuries sustained and other police interactions.
 - iii. Publish an annual report documenting the Board’s activities, findings, recommendations, and the Department’s responses to Board recommendations and oversight.
- g. Limitations – Some of the limitations the Board may have in performing their duties and responsibilities include but may not be limited to any or all of the following:
- i. Act 111 of 1968 (police collective bargaining agreements; binding interest arbitration)
 - ii. Borough Code (Title 8, Chapter 11)
 - Civil Service (Subchapter J)
 - iii. Criminal History Records Information Act (CHRIA) (Title 18, Ch. 91)
 - iv. Municipalities, Home Rule and Optional Plans (Title 53, Chapter 53, Subpart E) - State College Home Rule Charter

- v. Act 22 of 2017 (specifically, Chapter 67A of the Act related to Recordings by Law Enforcement Officers).
- vi. Open Meetings (Title 65, Chapter 7) - Executive Session, Meeting, Work Session; Exceptions

Section 9. Board Staffing and Support.

- a. Board Coordinator – The Borough Manager will assign a Borough administrator to serve as the Board Coordinator. The Board Coordinator and the Board Chairperson should meet monthly, at a minimum, to discuss Board-related matters and to plan the full Board meetings.

The duties and responsibilities of the Board Coordinator include but are not limited to the following:

- i. Development of procedures for an external civilian complaint process.
 - ii. Development of procedures for oversight by the Board (data analysis, monitoring, investigating).
 - iii. Development of outreach strategies that provide education and training, promote community engagement, and build partnerships to enable Board effectiveness.
 - iv. Development of a communications plan, including dissemination of information and preparation of an annual report.
 - v. Review progress by the Department towards implementation of International Association of Chiefs of Police (IACP) recommendations, Crisis Intervention Team (CIT) procedures, and responses to recommendations from the Task Force on Policing and Communities of Color, the Task Force on Mental Health Crisis Services, and other community studies.
 - vi. Ongoing oversight functions (data analysis, monitoring, investigating).
- b. Facilities and staff support - The Borough shall provide the Board with suitable facilities for the conduct of its meetings and other business. The Borough shall provide the necessary staff and services to provide administrative support for operations, including assistance with scheduling and hosting Board meetings, obtaining necessary equipment, providing necessary technology support and the preparation and dissemination of information.
- c. Contracted Services – When necessary for the Board to address their oversight duties and responsibilities, the Board may request from Borough Council, through the Board Coordinator, authorization to contract for any of the following services:
 - i. Independent legal counsel.
 - ii. Data Analyst.
 - iii. Other Subject Matter Expert

Any contracted services provided must adhere to the Borough's procurement procedures.

Section 10. Effective date.

This Ordinance shall take effect on October 1, 2021.

ATTEST:

BOROUGH OF STATE COLLEGE

Sharon K. Ergler
Assistant Borough Secretary

By:_____
Jesse L. Barlow
President of Council

EXAMINED AND APPROVED as an Ordinance this ____ day of July 2021.

Ronald L. Filippelli
Mayor

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