

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 519

(Duly Adopted March 12, 2014)

AN ORDINANCE AMENDING PORTIONS OF THE ALBURTIS ZONING ORDINANCE (CHAPTER 21 OF THE ALBURTIS CODIFIED ORDINANCES) RELATING TO COMMERCIAL COMMUNICATIONS TOWERS AND ANTENNAS TO PERMIT COMMERCIAL COMMUNICATIONS TOWERS BY CONDITIONAL USE ON LOTS IN RESIDENTIAL ZONING DISTRICTS USED FOR CERTAIN INSTITUTIONAL PURPOSES, TO REVISE THE DEFINITION OF "FALL ZONE", TO ELIMINATE THE REQUIREMENT THAT THE SETBACK OF A COMMERCIAL COMMUNICATIONS TOWER FROM A PROPERTY OR LEASE LINE OR STREET RIGHT-OF-WAY MUST NOT BE LESS THAN THE HEIGHT OF THE TOWER (SO LONG AS IT IS NOT LESS THAN THE RADIUS OF THE FALL ZONE OF THE TOWER), TO PERMIT AN EMERGENCY BACKUP GENERATOR TO BE PLACED ON-SITE OUTSIDE OF AN ENCLOSED BUILDING OR OTHER STRUCTURE, AND TO MAKE TECHNICAL CORRECTIONS.

WHEREAS, the Borough of Albutris is empowered to enact, amend, and repeal zoning ordinances under Article VI of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.*; and

WHEREAS, Borough Council has enacted a zoning ordinance, which has been amended from time to time and codified as Chapter 21 of the Albutris Codified Ordinances; and

WHEREAS, the zoning ordinance contains provisions regulating Commercial Communications Towers and Commercial Communications Antennas; and

WHEREAS, Borough Council desires to amend the zoning ordinance to permit Commercial Communications Towers by Conditional Use in Residential zoning districts (R-1, R-2, and R-3) on lots used for certain institutional purposes; and

WHEREAS, Borough Council believes that the setback of a Commercial Communications Tower from other property or lease lines and street right-of-way lines need not exceed the radius of the Fall Zone of the Tower (or, if greater, the applicable setback line for the zoning district), and so it desires to amend the zoning ordinance to eliminate the current requirement that the setback must also be no less than the height of the Tower, and clarify the definition of Fall Zone; and

WHEREAS, Borough Council desires to permit one emergency backup power generator on-site outside of an enclosed building or other structure; and

WHEREAS, Borough Council desires to make technical corrections to correct typographical errors, to update the reference to the building code to refer to the Uniform Construction Code, and to cite the requirements of the Wireless Broadband Collocation Act; and

WHEREAS, this zoning amendment is generally consistent with the Borough's Comprehensive Plan (the Southwestern Lehigh County Comprehensive Plan – Alburtis, Emmaus and Macungie Boroughs and Lower Milford, Lower Macungie and Upper Milford Townships); and

WHEREAS, at least thirty (30) days prior to the Council's adoption of this Ordinance, the Borough submitted a copy of this Ordinance to the Alburtis Planning Commission and the Lehigh Valley Planning Commission, to provide them with an opportunity to submit recommendations, in accordance with the provisions of 53 PA. STAT. ANN. §§ 10609(c) and 10609(e); and

WHEREAS, the Alburtis Planning Commission reviewed this Ordinance at its meeting on February 25, 2014 and recommended its adoption; and

WHEREAS, the Lehigh Valley Planning Commission reviewed this Ordinance at its meeting on February 27, 2014 and returned the following comments for the Borough's use:

The Commission found the proposed amendments a matter of local concern and voted to offer no comment.

WHEREAS, at least thirty (30) days prior to the Council's adoption of this Ordinance, the Borough submitted a copy of this Ordinance to the Boroughs of Macungie and Emmaus, and to the Townships of Lower Macungie, Lower Milford, and Upper Milford to provide them with an opportunity to submit comments, in accordance with paragraph 6 of the Southwestern Lehigh County Comprehensive Plan Inter-Governmental Agreement and Ordinance. The Upper Milford Township Board of Supervisors considered the ordinance and informed the Borough that they believe the proposal to be generally consistent with the Southwestern Lehigh County Comprehensive Plan. No other comments were received; and

WHEREAS, on February 26, 2014 and March 5, 2014, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburty, of its intention to conduct a hearing on this Ordinance on March 12, 2014 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburty, Pennsylvania, and to consider the adoption of this Ordinance thereafter. The notice stated the particular nature of the matter to be considered at the hearing, as provided in the title of this Ordinance; and

WHEREAS, immediately prior to the vote of Borough Council enacting this Ordinance, Borough Council conducted a hearing on this Ordinance, pursuant to 53 PA. STAT. ANN. § 10609(b), and did not substantially change or revise this Ordinance as a result of the hearing or the comments of the Alburty Planning Commission, the Lehigh Valley Planning Commission, or other municipalities;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Codified Ordinances § 21-300 (relating to Zoning—Definitions and Usage—Definitions Relating to Commercial Communications Towers/Antennae) is amended by amending subsection (h) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 21-300 Definitions Relating to Commercial Communications Towers/Antennae.

* * *

(h) **Fall Zone.** The term “Fall Zone” means the area on the ground within a prescribed radius from the base of a Commercial Communications Tower. The “Fall Zone” is the area within which there is a potential hazard from falling debris or the collapsing of the Commercial Communications Tower. The radius of the Fall Zone shall be presumed to be no less than the height of the Commercial Communications Tower, unless the Tower is designed to collapse upon itself in the event of tower failure. ~~The engineer of each~~ Each person who proposes to install a Commercial Communications Tower shall submit an initial determination of the Fall Zone for that Tower prepared and certified by a professional engineer experienced in tower structures, together with supporting documentation, as part of the application to establish the use, but the final determination of the Fall Zone shall be made by the Borough Council after considering all evidence presented at the hearing on the use.

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SECTION 2. Articles IV, V, and VI of Chapter 21 of the Codified Ordinances (relating to Zoning—Regulations for the R-1, R-2, and R-3 Residential Zoning Districts) are amended by amending Sections 21-404, 21-504, and 21-604 (relating to Conditional Uses) thereof as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Article IV — Regulations for R-1 Low-Density Residential District

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§ 21-404 Conditional Uses.

* * *

(h) Commercial Communications Tower.

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Article V — Regulations for R-2 Medium-Density Residential District

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§ 21-504 Conditional Uses.

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(l) Commercial Communications Tower.

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Article VI — Regulations for R-3 High-Density Residential District

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§ 21-604 Conditional Uses.

* * *

(n) Commercial Communications Tower.

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SECTION 3. Codified Ordinances § 21-1335 (relating to Zoning—Conditional Uses and Special Exceptions—Commercial Communications Towers and Commercial Communications Antennas) is amended by amending subsections (d), (f), (i), and (j), and adding a new subsection (t), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 21-1335 Commercial Communications Towers and Commercial Communications Antennas.

* * *

(d) Nonresidential Placement.

(1) Commercial Communications Antenna. A Commercial Communications Antenna may not be placed on any residential structure or on any structure located on a lot which is used in whole or in part for residential purposes.

(2) Commercial Communications Tower. A Commercial Communications Tower may not be placed—

(A) on any lot which is used in whole or in part for residential purposes; or

(B) on any lot in a Residential Zoning District (R-1, R-2, or R-3) which is unused or which is used, in whole or in part, for any purpose other than as a church or other place of worship, park or recreational facility, library, public or private educational institution, hospital, governmental use, and/or utility use.

* * *

(f) Setback. A Commercial Communications Tower shall be setback from the nearest property or lease lot lines and existing street right-of-way lines a minimum distance equal to the *greatest greater* of the height of the Commercial Communications Tower, the radius of the Fall Zone of the Commercial Communications Tower, or the applicable setback line for the zoning District.

* * *

(i) Equipment Shelter.

(1) In General. Except as provided in paragraph (2), all All equipment, supplies, and materials which are to be kept on-site to service a Commercial Communications Tower or Commercial Communications Antenna shall be stored in an enclosed building or other structure.

(2) Emergency Backup Generator. One emergency backup generator for use only in the event of a power failure may be kept on-site outside of an enclosed building or other structure.

(3) Required Information. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna ~~Information~~ shall provide detailed information about the contents of any equipment shelter or equipment room to service the facility. The information shall include, without limitation, the type and quantity of oil, gasoline, batteries, propane, natural gas, or any other fuel stored within the shelter.

(4) Hazardous Materials. The applicant shall demonstrate that any hazardous materials stored on-site shall be housed so as to minimize the potential for any adverse impact on nearby land uses. Materials Safety Data Sheets for all hazardous materials stored or utilized in the equipment shelter or room shall be submitted to the Borough and the Al-

burtis Fire Company. The use of fuels and hazardous materials shall be subject to all applicable federal, state, and local laws and regulations.

(j) Wind Resistance. Each person applying to establish or modify a Commercial Communications Tower or Commercial Communications Antenna ~~Information~~ shall provide a certification from a registered professional engineer stating that the Commercial Communications Tower or Commercial Communications Antenna satisfies the wind resistance requirements provided in ~~Chapter 31 (relating to Building Construction)~~ Chapter 30 (relating to Uniform Construction Code). The registered professional engineer shall also certify to the overall structural integrity of the facility.

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(t) Wireless Broadband Collocation Act. Notwithstanding anything to this contrary in this Chapter, any application for replacement, collocation, or modification of a wireless telecommunications facility or wireless support structure (including, but not limited to, Commercial Communications Towers and Commercial Communications Antennas), shall be subject to the limitations, procedures, time restrictions, and other requirements imposed upon municipalities by the Wireless Broadband Collocation Act, 53 PA. STAT. ANN. § 11702.1 et seq.

SECTION 4. The Executive Secretary of the Borough shall send a certified copy of this Ordinance to the Lehigh Valley Planning Commission within thirty (30) days after the date of enactment, as required by 53 PA. STAT. ANN. § 10609(g).

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 12th day of March, 2014, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Sharon Trexler, Executive Secretary

AND NOW, this 12th day of March, 2014, the above Ordinance is hereby **APPROVED**.

Kathleen Palmer, Mayor