

AN ORDINANCE AMENDING CHAPTER 328 OF THE EAST PITTSBURGH BOROUGH CODE OF ORDINANCES TO ADD A NEW ARTICLE VII, COMMUNICATIONS SYSTEMS IN THE PUBLIC RIGHT-OF-WAY, TO ESTABLISH REQUIREMENTS RELATING TO BOROUGH RIGHTS- OF-WAY MANAGEMENT, INCLUDING BUT NOT LIMITED TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TOWER -BASED AND NON -TOWER BASED WIRELESS COMMUNICATIONS FACILITIES AND SIMILAR INFRASTRUCTURE DEPLOYMENTS AND IMPOSING PENALTIES FOR VIOLATIONS; EFFECTIVE DATE; PENALTY

ORDINANCE NO. _____

WHEREAS, Council of the Borough of East Pittsburgh desires to regulate the location, placement, construction and maintenance of facilities, including but not limited to wireless communications facilities and similar infrastructure deployments, in Borough rights-of-way to protect residents, property owners and users of the rights of way from potential adverse impacts of such facilities, while allowing for quick, effective and efficient services within the Borough where the location of facilities to provide such services in Borough rights-of-way is necessary; and

NOW THEREFORE, the Council of the Borough of East Pittsburgh does hereby ordain and enact the following:

Small Cell Antennas in Rights-Of-Way

§ 328-41 Purpose.

- A. The purpose of this section is to establish policies and procedures for the placement of small cell antennas and associated poles in rights-of-way within the Borough's jurisdiction, in compliance with state and federal law to the extent it preempts local municipal control, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Borough rights-of-way and the Borough as a whole.
- B. Intent. In enacting this section, the Borough is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:
 - 1. Provide for the managed development of small cell antennas and associated poles 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;
 - 2. Establish procedures for the design, siting, construction, installation, maintenance and removal of small cell antennas and associated poles inside the public rights-of-way;
 - 3. Encourage the collocation of small cell antennas on existing structures rather than the construction of new pole-based structures;
 - 4. Ensure that small cell antennas and associated poles will be removed in the event that such structures are abandoned or become obsolete and are no longer necessary;
 - 5. Limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain Borough corridors, and other public ways and places;
 - 6. Limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

7. Limit environmental damage, including damage to trees;
8. Respect the character of the neighborhoods and other areas in which facilities are installed; and facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

§ 328-42 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY EQUIPMENT -Any equipment serving or being used in conjunction with a wireless telecommunications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment, buildings, cabinets and storage sheds, shelters or similar equipment.

ANTENNA - Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include private residence-mounted satellite dishes or television antennae or amateur radio equipment including, without limitation, ham or citizen band radio antennae.

COLLOCATION - The mounting or installing of one or more SCAs on an existing structure; and/or modifying a structure for the purpose of mounting or installing a SCA on that structure.

FCC - Federal Communications Commission.

POLE - A self-supporting lattice pole, guy pole, monopole, or any other pole, that may be utilized to support an antenna for receiving and/or transmitting a wireless signal.

RIGHT-OF-WAY - The area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Borough.

SMALL CELL ANTENNA (SCA) - The antennae, nodes, control boxes, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services. An SCA shall also be a facility that meets each of the following conditions:

- A. The structure on which antenna facilities are mounted;
 1. Are 39 feet or less in height, or up to 50 feet in height as may be allowed by the Borough as outlined in the "Small Cell Standards" appeal process; or
 2. Are no more than 10% taller than other adjacent structures; or
 3. Do not extend existing structures on which they are located to a height of more than 39 feet or by more than 10%, whichever is greater.
- B. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
- C. Antenna equipment associated with the facility (excluding antennas) is cumulatively no more than 28 cubic feet in volume.
- D. The facility does not require antenna structure registration under 47 CFR Part 17; and

- E. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR S 1.1307(b).

SMALL CELL ANTENNA APPLICANT (SCA APPLICANT) - Any person that applies for a SCA permit.

STEALTH TECHNOLOGY - Camouflaging methods applied to SCAs and other related facilities 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.

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 personal wireless service (whether on its own or comingled with other types of services).

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

§ 328-43 Permit for installation of a small cell antenna.

- A. No person shall place a SCA, or associated pole, in the right-of-way without first filing an application and obtaining a permit to do so, except as otherwise provided in this chapter.
- B. All applications for permit shall be in such form and shall provide such information as may be lawfully required by the Borough and is consistent with the FCC small cell order. The Borough may develop new or additional permit application forms, checklists, updated aesthetic and safety standards, and other related materials as required to optimally meet the goals of East Pittsburgh, its citizens, and its leadership.
- C. In considering an application for permit, the Borough shall take into account any objections made to the whole or any part of such application. The Borough may attach to any permit granted hereunder any conditions or modifications deemed necessary.
- D. Collocation. An application for a SCA requiring a newly constructed pole in the right-of-way shall not be approved unless the applicant provides evidence that SCA cannot be accommodated on an existing pole within 260 feet of the proposed location because use of the existing pole imposes technical limits or would involve additional material costs.
- E. R.F. certification. An application for a SCA shall include design and operation certification by a PA PE licensed RF engineer that the proposed SCA(s) comply with FCC regulations governing RF emissions and safety-related signage.
- F. Time limit for work. The proposed collocation, the modification or replacement of a pole or the installation of a new pole with SCAs attached for which a permit is granted under this section shall be completed within one year of the permit issuance date unless the municipality and the applicant agree in writing to extend the period.

§ 328-44 Fees.

- A. Application fee. All applications for collocation on an existing pole shall be accompanied by a fee of \$500 for a single up-front application that includes up to five SCAs, with an additional \$100 fee for

each SCA beyond five. All applications for new or replacement poles shall be accompanied by a fee of \$1,000 per new or replacement pole.

- B. Annual maintenance fee for right-of-way use. Every SCA in the right-of-way is subject to the Borough's right, in accordance with state and federal law, to fix annually a fair and reasonable compensation to be paid for use and occupancy of the right-of-way. Such compensation for right-of-way use shall be directly related to the Borough's actual right-of-way management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, documenting, permitting, supervising and other right-of-way management activities by the Borough. Owners of SCAs shall pay the following fees to compensate the Borough for the Borough's costs incurred in connection with the activities described above.
- C. The annual fee shall initially be set at \$270 per wireless facility per year and shall be amended by simple resolution of the Council of the Borough of East Pittsburgh in accordance with FCC allowances.

§ 328-45 When permit not required.

A. A permit shall not be required for:

1. Routine maintenance.
2. The replacement of an SCA with another SCA that is substantially similar or smaller in size, weight, and dimensions.

§ 328-46 Design requirements.

- A. Standard of care. All SCAs 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 Americans With Disabilities Act Guidelines (ADA), American National Standards Institute (ANSI) Code, National Electrical Safety Code (NESC), National Electrical Code (NEC), the Occupational Safety and Health Act (OSHA), Pennsylvania Public Utilities Commission (PUC) regulations and the Federal Communications Commission (FCC) Regulations, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors (NATE). Any SCA 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.
- B. The SCA shall employ the most current stealth technology commercially available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the SCA applicant shall be subject to the approval of the Borough.
 1. Lighting. Towers shall not be artificially lighted beyond what is required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect to surrounding properties as is permissible while still meeting state or federal requirements.
 2. Noise. All SCAs shall be operated and maintained so as not to produce noise that will constitute a nuisance to users of the right-of-way or property owners abutting the right-of-way. The use of a backup generator is prohibited except that in emergency situations and for periodic maintenance and testing by the wireless communications provider's technicians, such

use shall be permitted, where such noise standards may be exceeded on a temporary basis.

- C. Subject to applicable law, any height extensions to an existing pole shall require prior approval of the Borough. The Borough reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Borough which are stated in the design requirements published at the time of application.
- D. Signage. All facilities shall include a posted sign at the location. Such signage shall include the ownership, contact name and phone number in the event of an emergency and FCC registration number (if applicable). Such signage shall not include commercial advertising, shall not protrude from the tower or SCA, and is subject to approval by the Borough. The sign shall be limited to the maximum necessary size to provide the required information in a readable manner, not to exceed two square feet in area.
- E. Where technically feasible and subject to reasonable aesthetic and cost considerations, any proposed SCA shall be designed structurally, electrically, and in all respects to accommodate both the SCA applicant's antennae and comparable antennae for future users.
- F. All SCAs or similar infrastructure deployments and Accessory Equipment or similar infrastructure deployments shall be located so as not to cause any physical or visual obstruction to pedestrian, bicycle or vehicular traffic, or to otherwise create safety hazards to pedestrians, cyclists and/or motorists or to otherwise inconvenience public use of the Right-of-Way as determined by the Borough. In no case shall ground - mounted equipment, walls, screening or landscaping be located within (18) inches of the face of the curb, or in an area in which there are no curbs, within (3) feet of the edge of cartway.
- G. Operating frequency and transmission power range.
 - 1. Frequencies: All applications for a new small cell antenna installation shall use one of the licensed frequency bands for 5G. No use of shared bands will be allowed in order to minimize interference with Borough traffic and police band uses.
 - 2. If the Borough experiences interference to any of its police cameras, traffic control systems, or any other Borough radio devices, immediately after the installation and initial operation of a SCA facility, the Borough may require the SCA owner of the newly installed SCA to adjust their operation and/or perform a radio study to prove the new facility is operating within FCC permitted SCA frequencies and power output ranges.
- H. Associated Equipment
 - 1. All equipment associated with a SCA or similar infrastructure deployment located above ground must be enclosed and all wires and cables must be housed in shrouds, risers or conduit. To the extent commercially and technically feasible, all equipment shall be of the same color and the color shall match as closely as possible the color of the pole or upright structure to which it is mounted, and to avoid unsightly and out -of -character developments.
 - 2. The maximum width and depth of any piece of associated equipment may not exceed 1½ times the diameter of the pole on which it is to be located unless the Applicant proves that no reasonable alternative exists.

3. Antennas must be screened with a radome or similar concealment technique that covers the entire antenna, cables, connectors and hardware, where such screening will not interfere with transmission/reception capabilities of the antenna.
4. Pole -mounted equipment other than cabling must be located at least eight (8) feet above the ground.

§ 328-47 Damage and repair.

- A. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider and return the right-of-way to its functional equivalence as it existed prior to any work being done in the right-of-way by the wireless provider.
- B. If the wireless provider fails to make the required repairs within 30 days after written notice, the Borough may perform those repairs and/or remove the damaged article(s) and charge the wireless provider the reasonable, documented cost of the repairs.
- C. The Borough may suspend the ability of an SCA applicant to receive a new permit from the Borough until the applicant has paid any and all outstanding repair costs to the Borough.

§ 328-48 Additional antennae.

As a condition of approval for all new poles for SCAs in the right-of-way, the SCA applicant shall provide the Borough with a written commitment that it will allow the Borough and/or other service providers to collocate antennae on their poles where technically and commercially reasonable. Written approval is not required if the additional antennae are contained within a previously approved shroud designed to include the additional antennae. Providers shall notify the Borough when adding any additional antennae under previously approved shrouds.

§ 328-49 Relocation or removal of facilities.

- A. Notice. Within 90 days following written notice from the Borough, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any SCA or pole for which it has a permit hereunder whenever the Borough has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Borough improvement in or upon, or the operations of the Borough in or upon, the right-of-way and all other occupiers of the same right-of-way are required to relocate their facilities in a similar manner.
- B. Emergency removal or relocation of facilities. The Borough retains the right to cut or move any SCA or pole located within the right-of-way, as the Borough may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the Borough shall notify the wireless provider and provide it an opportunity to move its SCA or pole prior to cutting or removing them, and in all circumstances shall promptly notify the wireless provider after cutting or removing a SCA or pole. The Borough may recover the actual cost of such removal from the wireless provider.
- C. Abandonment of facilities. The Borough may require a wireless provider to remove an abandoned SCA or pole permitted hereunder within 90 days of abandonment. The Borough shall notify the wireless provider in writing if the Borough requires removal of the abandoned SCA or pole. Should the wireless provider fail to timely remove the abandoned SCA or pole, the Borough may remove the SCA or pole after reasonable written notice to the wireless provider of the Borough's intent to remove

the SCA or pole, and may recover the actual cost of such removal from the wireless provider. A SCA or pole shall be deemed abandoned at the earlier of the date that the wireless provider indicates in any way that it is abandoning the SCA or pole, or the date that is 90 days after the date that the SCA or pole ceases to be used, unless the wireless provider gives the Borough reasonable evidence that it is diligently working to place the SCA or pole back in service.

§ 328-50 Review of small cell antenna applications.

- A. Within 15 business days of receiving an initial application, the Borough will determine and notify the applicant in writing whether the application is materially complete. If an application is materially incomplete, the Borough will specifically identify the missing documents or information, and the specific rule or regulation creating the obligation to submit such documents or information. The application review periods set forth in Subsection C shall restart at zero on the date which the applicant submits all the documents and information identified by the Borough to make the application complete.
- B. If the applicant's supplemental submission(s) fails to make the application complete, and the Borough notifies the applicant within 15 business days of the supplemental submission, the application review period set forth in Subsection C shall be tolled until the applicant provides the missing documents and information. The application review period resumes (the date calculation does not restart) to run on the date when the applicant submits all the documents and information identified by the Borough to render the application complete.
- C. All applications shall be processed on a nondiscriminatory basis, and the Borough shall approve or deny an application for:
 1. Collocation of SCA on an existing pole within 60 days of submission of the application; or
 2. Within 90 days for applications to deploy a SCA using a replacement or new pole.
- D. An applicant and the Borough may enter into a written agreement to toll the time periods set forth in Subsection C.

§ 328-51 Bonding and insurance.

- A. Every owner of an SCA or pole located in the public right-of-way shall at all times fully indemnify, protect and save harmless, the Borough of East Pittsburgh, from and against all claims, actions, suits, damages and charges, and against all loss and necessary expenditures arising out of the installation and operation of the SCA or pole, or from the neglect or failure to maintain its equipment in good order and condition.
- B. Every owner of a SCA or pole shall procure and maintain insurance to protect themselves and the Borough of East Pittsburgh from any and all claims for damages to property and/or personal injury, including death, which may arise from their operations and the maintenance of the SCA or pole. Certificates of insurance shall name the Borough of East Pittsburgh as additionally insured and shall be filed with the Borough Code Enforcement Officer at the time of the permit application and kept in force at all times. The limits of insurance shall be subject to the approval of the Borough. Notwithstanding the foregoing, a wireless provider may self-insure the required insurance under the same terms and conditions as outlined above.

§ 328-52 Conflicts with other chapters.

This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict

herewith, to the extent of such conflict.

§ 328-53 Conflicts with state and federal laws.

In the event that applicable federal or state laws or regulations conflict with the requirements of this chapter, the wireless provider shall comply with the requirements of this chapter to the maximum extent possible without violating federal or state laws or regulations.

§ 328-54 Authority granted; no property right or other interest created.

A permit from the Borough authorizes an applicant to undertake only certain activities in accordance with this chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the right-of-way.

§ 328-55 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. Time, place and manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all SCAs in the right-of-way based on public safety, traffic management, physical burden on the right-of-way, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Borough and the requirements of the Public Utility Code.
- C. Severability. If any section, subsection, sentence, clause, phrase or word of this chapter 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.
- D. When effective. This chapter shall become effective 10 days after adoption.

§ 328-56 Penalty.

- A. Any person violating the provisions of this chapter will, upon conviction thereof, be fined not more than \$600 for each and every offense, together with costs, and in the default of payment thereof, be imprisoned for not more than 30 days. Each failure to obtain a permit, or having obtained a permit, to comply with any of the requirements of this chapter, and each day during which such violation continues, will constitute a separate offense.
- B. The Borough reserves the right to deny the issuance of future permits to any person or company who violates the provisions of this chapter.