ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF MAIDENCREEK, BERKS COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES (ORDINANCE NO. 223) OF THE TOWNSHIP, BY SUPPLEMENTING AND/OR REPLACING EXISTING WIRELESS COMMUNICATION FACILITY REGULATIONS AND ADDING APPLICABLE DEFINITIONS

WHEREAS, on March 11, 2010, the Board of Supervisors of the Township of Maidencreek, Berks County, PA adopted Ordinance 223 codifying the Township's Ordinances (the Code); and

WHEREAS, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order (the September 26, 2018 Ruling) interpreting the Telecommunications Act of 1996 with regard to regulations for wireless service providers, including 5G services; and

WHEREAS, the Maidencreek Township Planning Commission has recommended substantive changes to Chapter 220 (Zoning) of the Code in furtherance of compliance with the September 26, 2018 Ruling and protection of the health, safety and welfare of residents and visitors of the Township of Maidencreek.

NOW THEREFORE, The Board of Supervisors of the Township of Maidencreek, Berks County, PA (the Township) in lawful session duly convened hereby ENACTS AND ORDAINS the following amendments to the Code as follows:

Section 1. Amendment of Part II: General Legislation, Chapter 220 (Zoning), Article II – Terminology, Section 220-11 (Definitions) by Adding the following Defined Terms.

The following definitions are hereby added, in alphabetical order, to Article II – Terminology, Section 220-11 (Definitions) of Chapter 220 of the Code, as follows:

COLLOCATED SMALL CELL INSTALLATION - means a single telecommunication pole, mast, tower, cable, wire or other structure supporting multiple antennas, dishes, transmitters, repeaters, or similar device owned or used by more than one public or private entity.

EXEMPTED TELECOMMUNICATIONS FACILITIES - includes, but not limited to the following:

- A single ground or building mounted receive-only radio or television antenna including any mast, for the sale use of the tenant occupying the residential parcel on which the radio or television antenna is located, with an antenna height not exceeding twenty-five (25) feet.

- A ground or building mounted citizens band radio antenna, including any mast, if the height (post and antenna) does not exceed thirty-five (35) feet.

- A ground, building or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five (35) feet.

- A ground or building mounted receive-only radio or television satellite dish antenna which does not exceed thirty-six (36) inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located, provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.

- Mobile services providing public information coverage of news events of a temporary nature.

- Hand-held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar personal use devices.

- Government-owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding thirty-five (35) feet.

- Township-owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy (70) feet.

- Telecommunication facilities, including multiple antennas located on an industrial parcel and utilized for the sole use and purpose of communications between employees/vehicles of said company in the course of business.

MAJOR TELECOMMUNICATIONS FACILITY – means telecommunication towers, poles or similar structures greater than fifty (50) feet in height, including accessory equipment such as transmitters, repeat microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, as well as support structures, equipment buildings and parking areas.

SMALL CELL INSTALLATION – means all equipment required for the operation and maintenance of so-called “small cell” wireless communication facilities (WCF’s) that transmit and/or receive signals but are not “major Communication Facilities” including antennas, microwave dishes, power supplies, transformers, electronics, and other types of equipment required for the transmission or receipt of such signals.

Section 2. Amendment of Part II: General Legislation, Chapter 220 (Zoning), Article XVI (Supplementary Regulations), Section 220-81 (Wireless Communication Facilities) by Adding the following Sections.

The following sections are hereby added to Article XVI – Supplementary Regulations of Chapter 220 of the Code, Section 220-81 (Wireless Communication Facilities), as follows:

220-81 (B – Use Regulations) (2 – Uses Permitted by Conditional Use) (c – New Communication Towers Outside Public Rights-of-Way) (23 – Removal)

Replacement – when future technology avails itself with radiation suppressant devices and/or less harmful equipment to humans, such equipment shall replace dated equipment as soon as possible.

220-81 (C – Permit Processing Time Frames) (2 – For a Tower-Based WCF) (e)

If additional information was requested by the Township or any required zoning approval (conditional use or height variance) to complete the application, the time required by the WCF Applicant to provide the information or secure the required zoning approvals shall not be counted toward the 150-day review period.

Section 3. Amendment of Part II: General Legislation, Chapter 220 (Zoning), Article XVI (Supplementary Regulations), Section 220-81 (Wireless Communications Facilities) by Deleting Existing Sections 220-81(B)(2)(d)(6)(h), 220-81(B)(2)(e), 220-81(C)(1) and 220-81(C)(2) and Replacing Those Sections.

The existing provisions of Sections 220-81(B)(2)(d)(6)(h), 220-81(B)(2)(e), 220-81(C)(1), and 220-81(C)(2) of the Code are Deleted and Replaced with the following provisions, as follows:

220-81 (B – Use Regulations) (2 – Uses Permitted by Conditional Use) (d – New Communication Pole/Tower Inside Public Rights-of-Way) (6(h))

As part of the application for a new pole/tower based WCF within the public right-of-way, the applicant shall document compliance with the requirements of Section 220-81.B(2) (d) [1-6] above. In addition, the application should include:

- Submission of a zoning permit.
- Submission of a detailed site and engineering plans for each proposed WCF installation including all associated equipment necessary for operation.
- Photographs of proposed WCF antenna and equipment.
- Visual impact analysis with photo simulations.
- If any associated ground or underground equipment is proposed to be located outside of the public right-of-way, a copy of an Easement Agreement from the property owner on who's property the facilities are to be located shall be provided.

220-81 (B – Use Regulations) (2 – Uses Permitted by Conditional Use) (e – New Non-Tower WCF Inside Public Rights-of-Way)

New Non-Tower WCF's located within the public right-of-way shall be collocated on existing poles, such as utility poles or light poles. If collocation is not technologically feasible, the WCF Applicant shall locate its non-tower WCF's on existing poles or freestanding structures that do not already act as wireless support structures with the approval of the Township and PennDOT.

Should none of the above location options be feasible and a new pole is proposed by the applicant, the proposed pole shall be 35 feet in height or less, or 110% of the height of poles in the surrounding streetscape, whichever is higher. In addition, any of the new WCF's covered under this subsection shall be compliant with the following:

1) WCF installations located above the surface grade in the public right-of way including, but not limited to, those on streetlights and joint utility poles, shall consist of equipment components that are not more than six (6) feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.

2) Antenna and related equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

3) The Township and PennDOT shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Tower-Based WCF's in the public 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 Township and the requirements of the Public Utility Code.

4) Non-Tower WCF's and related equipment shall be located as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way as determined by the Township and PennDOT. In addition:

    a) In no case shall ground-mounted related equipment, walls, or landscaping be located within eighteen (18) inches of the face of curb, within two (2) feet of the edge or cartway if no curb, or within an easement extending onto a privately owned lot.

    b) For sites in residential developments where utilities are underground, ground level cabinets are prohibited. Underground cabinets are required to be used. Ground level cabinets are permitted in all non-residential zones provided that such ground level cabinet is less than 28 cubic feet in volume, is finished and/or painted so as to blend in with its background and does not inhibit any existing sight triangles.

c) If an electrical meter cabinet is located outside of the public right-of-way, either underground or above ground, the applicant will need to secure an Easement Agreement from the property owner of the property upon which the equipment is to be located. Above ground level cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township and PennDOT.

d) Any graffiti on the non-tower WCF or on any related equipment shall be removed at the sole expense of the WCF owner.

e) Minimum spacing between small cell WCF's shall be 300 feet between WCF installations. Small cell WCF's shall not be located within a distance equal to or less than the front yard setback distance of an adjoining existing residence.

f) Relocation or removal of facilities. Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Non-Tower WCF in the right-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Non-Tower WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations and PennDOT, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

   i) The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way.

   ii) The operations of the Township or other governmental entity in the right-of-way.

   iii) Vacation of a street or road or the release of a utility easement.

   iv) An emergency as determined by the Township.

g) As part of the application for a new non-tower WCF within the public right-of-way, the applicant shall document compliance with the requirements of Section 220-81.B(2) e [1-6] above. In addition, the application should include:

   - Submission of a zoning permit.

- Submission of a detailed site and engineering plans for each proposed WCF installation including all associated equipment necessary for operation.
- Photographs of proposed WCF antenna and equipment.
- Visual impact analysis with photo simulations.
- If any associated ground or underground equipment is proposed to be located outside of the public right-of-way, a copy of an Easement Agreement from the property owner on whose property the facilities are to be located shall be provided.

220-81 (C – Permit Processing Time Frames) (1 – For a Non-Tower WCF)

(c) 60 Days – For collocation of small WCF's (non-tower based WCF's) on an existing wireless support structure to which they are to be attached which does not substantially change the physical dimensions of the wireless support structure, the Township within 60 days of receipt of a complete application, shall make its decision on whether to approve the application.

(d) 90 Days – For collocation of a small WCF on an existing non-tower based WCF that does substantially change the physical dimensions of the wireless support structure to which they are attached as defined by the WBCA, or for the construction of a new small WCF on an existing pole (utility pole, street light, etc.) or a new pole of less than fifty (50) feet in height, to be used as a wireless support structure to which the WCF's are to be attached, the Township within 90 days after receipt of a complete application shall make its decision whether to approve the application.

220-81 (C – Permit Processing Time Frames) (2 – For a Tower-Based WCF)

(c) 90 Days – For collocation of a new small wireless facility (WCF) on an existing wireless support pole or tower structure in excess of fifty (50) feet in height, the Township upon receipt of a complete application shall render its decision in the application within 90 days.

(d) 150 Days – For construction of a new pole or tower based WCF on a wireless support structure in excess of fifty (50) feet in height, the Township shall act upon the application within 150 days of receipt of a complete application.

Section 4. Severability.

The provisions of this Article shall be severable, and if any of its provisions shall be held to be unconstitutional, illegal, such decision shall not affect the validity of any remaining provisions of this Article. It is hereby declared that it is the legislative intent that this Article would have been adopted had the unconstitutional or illegal provisions not been included.

Section 5. Repealer.

All ordinances or parts of ordinances inconsistent with the provisions of the Ordinance are hereby repealed.

Section 6. Effective Date.

This Ordinance shall be effective five (5) days after enactment.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of Maidencreek Township, County of Berks, Pennsylvania, in lawful session duly assembled, this _____ day of _____, 2019.

MAIDENCREEK TOWNSHIP
BOARD OF SUPERVISORS

By:_____
Claude Beaver, Chairman

_____
Heidi Fiedler, Vice-Chair

_____
Joseph E. Rudderow, III, Supervisor

Attest:

_____
Diane Hollenbach, Secretary