MAIDENCREEK TOWNSHIP
PROPOSED CODE AMENDMENTS
SECTION 220-81 WIRELESS COMMUNICATION FACILITIES

LATEST FCC SMALL CELL ORDER

Recently, the Federal Communications Commission (FCC) issued a new set of Rules for new 5G Infrastructure. These new FCC Small Cell Order made a number of changes:

- Review Times - changes to the existing "shot clocks" under which various review times are established. These include time frames of 60, 90 and 150 days. It is important to note that the "shot clocks" have no legal effect, in other words if the review times ae exceeded by the municipality, we are not in a "deemed approval" situation.

- Spacing Implications for New WCF's - with the roll-out of the new 5F Infrastructure, due to its utilization of high frequency spectrum, the 5G RF signals does not propagate far enough to be practical for any wide are coverage. As such typical spacing of WCF's from 300-500 feet is needed, resulting in the deployment of many more WCF/s to cover relatively small areas.

- Batch Applications – under the FCC ruling, batch applications of multiple requests for the same type of facilities filed simultaneously are subject to the same deadlines as an individual application.

- Fee Guidelines – the FCC Order also establishes a set of "safe harbor" fees that municipalities can charge for small cell applications and user fees. The FCC views these fees as safe harbors because it believes they are low enough that no carrier would challenge them if they were imposed unilaterally in a local government's regulations. Nothing in the FCC Order prohibits a municipality to charge higher fees, but if a carries files a lawsuit challenging the fees imposed, the burden would be on the local government to demonstrate that the amount is a reasonable approximation of its costs and that its costs are reasonable. The FCC did not specify a methodology for calculating cost, or what expenses could be included.

- FCC Rule Preemption – these rules preempt any State Legislations not meeting the current requirements.

- Existing WCF Agreements – should a municipality already have entered into an Agreement with a carrier or infrastructure provider that covers WCF's, the FCC Ruling does not preempt that Agreement. A municipality could also enter into a new WCF Agreement that could differ with the fee structure set forth under the FCC Order as long as it was mutually acceptable to both parties.

- Small vs. Major Telecommunication Facilities – the Order establishes a height range of 50 feet or less for small cell facilities and over 50 feet for major cell facilities.

MAIDENCREEK TOWNSHIP CODE AMENDMENT

Maidencreek Township sets forth its requirements regulations wireless communication facilities (WCF's) under its Zoning Ordinance, Chapter 220 of the Township Code.

For the better part, the existing regulations of Section 200-81 are in good shape with respect to compliance with the new FCC Rules. The overall structure and breakdown of the various categories of WCF Facilities is still valid. In fact, a number of the current "sample ordinances" collected appear to have been largely based on SDE's model that was used for Maidencreek Township.

After reviewing a number of ordinances as well as white papers and other industry articles on the new 5G Infrastructure, there are a couple of areas for which amendments to the existing Township WCF Requirements are recommended. These include:

- Additional definitions
- Shot Clock adjustments
- WCF Application and User Fees
- Spacing issues (between various small cell facilities and between residences)
- Adjustments to application documentation

Suggested Amendments:

Section 200-11, Definitions:

(Addition of the following new definitions)

- *Collocated Small Cell Installation – means a single telecommunication pole, mast, tower, cable, wire or other structure supporting multiple antennas, dishes, transmitters, repeaters, or similar devices 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 sole 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 feet.*
    - *A ground or building mounted citizens band radio antenna, including any mast, if the height (post and antenna) does not exceed thirty-five 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 n not exceed thirty-five feet.*

- *A ground or building mounted receive-only radio or television satellite dish antenna which does not exceed thirty-six 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 feet.*

- *Township-owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy 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 50 feet in height, including accessory equipment such as transmitters, repeaters 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 220-81.B,
Use Regulations – Revise table listing as follows:

- *"New communication pole/tower inside of ROW Section 220-81.B(2)(d)*

Section 220-81.B(2)(d)

- *Revise heading as follows – "New communication pole/tower inside public right-of-way."*

- *Change 40 feet to 50 feet (this change made to match 50 ft. height max for small cells per FCC Order)*

Section 220-81.B(2)(d)[6][h]
Delete this section on reimbursements, to be covered later in new fee subsection. Replace with the following on application requirements.

New [h]

[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-or-way , a copy of an Easement Agreement from the property owner on whose property the facilities are to be located shall be provided*

Section 220-81.B(2)(e) – amend as follows:

(e) New non-tower WCF inside public right-of-way. New non-tower WCF's located … approval of the Township and PennDOT. ~~, provided they are compliant with the following:~~

Should none of the above loction options be feasible and a new pole it 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 new covered under this subsection shall be compliant with the following:

Section 220-81.B(2)(e)[4][b, c & e] – replace to read as follows:

- *[b] For sites in residential developments where utilities are underground, ground level cabinets are prohibited. Either underground cabinets or pole mounted cabinets may be used. If a pole mounted cabinet, it may not exceed 3 cubic feet in volume and must be finished and/or painted to blend in with the existing streetscape. 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.

- *[e] Minimum spacing between small cell WCF's shall be 300 feet between WCF installations. Small cell WCF's shall not be located within 100 feet of an adjoining existing residence.*

Section 220-81.B(2)(e)[4][g]
Delete this section on reimbursements, to be covered later in new fee subsection. Replace with the following on application requirements.

New [g]

[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-or-way , a copy of an Easement Agreement from the property owner on whose property the facilities are to be located shall be provided*

Section 220-81.C
Permit Processing Time Frames - revisions as follows to reflect new FCC Shot Clocks

Section 200-81.C(1), Non-tower WCF's – delete subsections c & d and replace as follows:

(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.

Section 200-81.C(2), Amend subsection title to read *"For a Pole/Tower based WCF"* – delete subsections c & d and replace with new c, d & e as follows:

(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 on 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.

(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.

Add New Sections:

Section 220-81.D Permit / ROW Reimbursement Fees for WCF's within Public Rights-of-Way:

(This section replaced the previous text on reimbursements for ROW use. It presents the "safe harbor" fees outlined in the latest FCC Order. These fees are not mandated, and the Township may charge higher fees, but they may have to justify them in light of similar fees charged for other utilities using the public right-of-way. An item for Township consideration on how they want to handle this issue – leave it open ended to be established in a Carrier Agreement or established via the ordinance.)

The following fees shall apply to all new WCF applications submitted to the Township for installations located within the public right-pf-way.

(a) WCF Application Fee – An Application Fee of $500 for a single WCF application that may include up to five (5) batch WCF's, with an additional $100 for each batch WCF required beyond the five. If a batch WCF application is submitted, it must be for the same equipment to be installed on existing poles or other existing wireless support structures. Dissimilar equipment installations, or installations on both existing poles and new poles will require separate applications.

(b) WCF Reimbursement for Right-of-Way Use - A fee of $250/year per each WCF facility located within a public right-of-way shall be required.

Section 220-81.E Waiver Provision:

(This subsection is presented for Township consideration to provide for a process to address any unforeseen conflict with the FCC Order that otherwise might end in court litigation.)

The Township Board of Supervisors may waive any siting standards set forth in Sections 220-81.B(2)(d & e) where the Applicant demonstrates that the strict enforcement of said standard:

(a) Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or

(b) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(8)(i)(II); or

(c) Will violate any requirement set forth in the FCC Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment." WT Docket No. 17-79, and WT Docket No 17-84; or

(d) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide Utility Service to any prospective customer within the Township.