

NOTICE

NOTICE IS HEREBY GIVEN that the Council of the Borough of Avondale, Chester County, Pennsylvania, will conduct public hearings, as part of its regularly scheduled meeting, on Tuesday, December 21, 2021 at the Avondale Borough Hall, 110 Pomeroy Avenue, Pennsylvania at 6:00 p.m., prevailing time to consider, and immediately thereafter decide whether to enact ordinances which are titled and summarized as follows:

1) AN ORDINANCE OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE BOROUGH'S ZONING ORDINANCE OF 1963, AS AMENDED TO INCLUDE UPDATED AND NEW PROVISIONS REGULATING WIRELESS COMMUNICATIONS FACILITIES IN THE BOROUGH OF AVONDALE

2) AN ORDINANCE OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF AVONDALE TO ADOPT A NEW ORDINANCE ENTITLED "SMALL WIRELESS FACILITIES" TO PROVIDE FOR NEW ORDINANCE PROVISIONS TO ALLOW FOR, AND REGULATE, SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE BOROUGH OF AVONDALE.

A complete copy of the proposed Ordinances may be found on the Borough's website www.avondaleboro.net and copies may be obtained by contacting the Borough at (610)268-8501 to arrange to receive a copy via regular mail or electronic mail. The Ordinances are also on file for public inspection at the Daily Local News by calling (215) 648-1066 and at the Chester County Law Library, Chester County Justice Center, Suite 2400, 201 W. Market Street, West Chester, PA 19380 where the same can be examined without charge. If any person who wishes to attend the meeting has a disability and/or requires an auxiliary aid, service or other accommodation, he or she should contact the Borough at (610) 268-8501 to discuss how those needs may be accommodated.

Kimberly P. Venzie, Esquire
Avondale Borough Solicitor

Notice to run on November 30, 2021 and December 7, 2021

ORDINANCE NO. 2021 - 272

**BOROUGH OF AVONDALE
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE BOROUGH OF AVONDALE,
CHESTER COUNTY, PENNSYLVANIA, AMENDING THE
BOROUGH'S ZONING ORDINANCE OF 1963, AS AMENDED
TO INCLUDE UPDATED AND NEW PROVISIONS
REGULATING WIRELESS COMMUNICATIONS FACILITIES
IN THE BOROUGH OF AVONDALE.**

WHEREAS, Avondale Borough Council has determined to amend its Zoning Ordinance with respect to Wireless Communications Facilities in order to comply with state and federal laws and rules and regulations, and to provide for additional regulations and processes to govern such use within Avondale Borough.

NOW THEREFORE, BE IT HEREBY ENACTED AND ORDAINED, BY THE COUNCIL OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, TO AMEND THE AVONDALE BOROUGH ZONING ORDINANCE OF 1963, AS AMENDED, AS FOLLOWS:

SECTION 1. Section 12.5 is hereby repealed and removed in its entirety.

SECTION 2. A new Part shall be added to the Zoning Ordinance immediately following Part 16 and shall read as follows:

“Part 17. Wireless Communications Facilities.

§17.1 PURPOSE AND INTENT

A. Purpose.

The purpose of this subsection and the standards established herein are to govern the use, construction and siting of wireless communications facilities in recognition of the nature of wireless communications systems and the Federal Telecommunications Act of 1996, and subsequent related state and federal laws governing telecommunications, as amended from time to time. These regulations are intended to:

1. Accommodate the need for wireless communications facilities while regulating their location and number so as to ensure the provision for necessary services.
2. 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 co-locate their commercial communications antennas and related facilities on existing towers if possible.

3. Ensure the structural integrity of commercial communications antenna support structures through compliance with applicable industry standards and regulations, including the Borough's Building Code.

4. Promote the health, safety and welfare of the Borough's residents.

B. Small Wireless Facilities.

Wireless Communications Facilities that qualify as Small Wireless Facilities as has been defined by the Federal Communications Commission are governed by a separate Borough ordinance, and related design criteria, as adopted by the Borough to address Small Wireless Facilities. Wireless Communications Facilities that fall under the definition of Small Wireless Facilities are governed and controlled by the Borough's Small Wireless Facilities ordinance and approved design criteria. Small Wireless Facilities are not subject to the provisions of this Section.

§17.2 DEFINITIONS.

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

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 tower-based wireless communications facilities defined below.

BASE STATION

any structure or equipment at a fixed location that enables FCC-licensed or authorized communications between user equipment and a communications network. Includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a "base station" at the time the relevant application is filed with the State or municipal authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not at that time support or house base station components. The term includes buildings, light poles, utility poles, water towers, etc., as well as DAS systems and small cells.

CO-LOCATION

the mounting of one or more WCFs, including antennae, on an existing tower-based WCF or utility or light pole.

COMMUNICATIONS EQUIPMENT BUILDING

the building or cabinet in which electronic receiving, relay or transmitting equipment for a wireless communications facility is housed and covering an area on the ground not greater than two hundred square feet (200 sq. ft.).

DATA COLLECTION UNIT (DCU)

Any ground-mounted structure that is designed and constructed primarily for the purpose of data collection, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes structures used to wirelessly read utility meters and for other remote monitoring purposes. For the purposes of this ordinance, the term includes facilities that are not solely under the jurisdiction of the Pennsylvania Public Utility Commission, except where permitted by law. The term includes the structure and any supporting structures thereto.

DISTRIBUTED ANTENNA SYSTEMS (DAS)

network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.

FCC

Federal Communications Commission.

MONOPOLE

A WCF or site which consists of a single pole wireless support structure, designed and erected on the ground or on top of a structure, to support antennae and connecting appurtenances.

NON-TOWER WIRELESS COMMUNICATIONS FACILITY (NON-TOWER WCF)

All wireless communications facilities (WCFs) that are not tower-based, including, but not limited to, data collection units, antennae and related equipment. Non-tower WCF shall include support structures for antennae and related equipment that is mounted to the ground or at ground-level. Other non-ground mounted examples can include, but not limited to, installation of a WCF on an existing utility pole, light pole, barn, church steeple, farm silo, water towers or other similar structures.

SUBSTANTIALLY CHANGE OR SUBSTANTIAL CHANGE (WHERE RELATED TO WIRELESS COMMUNICATION FACILITIES)

a modification to the physical dimensions of a tower or base station as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act (effective February 22, 2012), if it meets any of the following criteria:

1. For tower-based WCFs outside of the public rights-of-way, it increases the height of the facility by more than ten percent (10%), or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed twenty feet (20'), whichever is greater;
2. For tower-based WCFs inside the public rights-of-way, and for all base stations, it increases the height of the facility by more than ten percent (10%) or ten feet (10'), whichever is greater;
3. For tower-based WCFs outside of the public rights-of-way, it protrudes from the edge of the existing tower by more than twenty feet (20'), or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
4. For tower-based WCFs inside the public rights-of-way, and for all base stations, it protrudes from the edge of the existing tower, or wireless support structure, by more than six feet (6');

5. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
6. It entails any excavation or deployment outside the current permitted area of the existing tower-based WCF or base station;
7. It would defeat the existing concealment elements of the tower or base station; or
8. It does not comply with conditions associated with the prior approval of construction or modification of the tower-based WCF or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds.

TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF)

any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers and monopoles. DAS hub facilities are considered to be tower-based WCFs.

WIRELESS COMMUNICATIONS

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

WIRELESS COMMUNICATIONS FACILITY (WCF)

the antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services. Not included are Non-Commercial Antennas and Towers (as defined).

WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT)

any person that applies for a wireless communications facility building permit, zoning approval and/or permission to use the public ROW or other Borough owned land or property.

WIRELESS COMMUNICATIONS FACILITY, HEIGHT

the vertical distance measured from the base of a wireless communications facility support structure at the undisturbed grade to the highest point of the structure. If the wireless communications facility support structure is on a sloped grade, the average between the highest and lowest grades shall be used in calculating the height.

WIRELESS SUPPORT STRUCTURE

a freestanding structure, such as a tower-based wireless communications facility or any other support structure that could support the placement or installation of a wireless communications facility if approved by the Borough.

§ 17.3 Non-Tower Wireless Communication Facilities.

A. General Requirements for Non-Tower Wireless Communication Facilities (WCF). The following standards and regulations shall apply to all Non-tower Wireless Communications Facilities, regardless of location:

1. Permitted in All Zoning Districts Subject to Regulations. Non-tower WCFs are permitted by right in all zoning districts subject to the restrictions and conditions prescribed below and subject to the proper zoning and/or permits issued by the Borough. Applicants proposing installations on existing buildings or towers shall submit evidence of agreements and/or easements necessary to provide access to the existing building or tower so that installation and maintenance of the equipment can be accomplished.

2. Standard of Design and 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, Pennsylvania Construction Code Act and Regulations and National Electrical Code, and shall not affect pedestrian or vehicular traffic. Design certification from a Pennsylvania registered professional engineer is required to attest that the existing structure can adequately support the proposed equipment installation. Detailed construction and elevation drawings, indicating antenna locations and mounting design, shall be submitted by the applicant. 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.

3. Wind. Any non-tower WCF structures shall be designed to withstand the effects of wind according 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 (ANSFEINTIA-222-E Code, as amended).

4. Public Safety Communications. No non-tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.

5. Aviation Safety. Non-tower-based WCFs shall comply with all Federal and State laws and regulations concerning aviation safety, and any applicable airport zoning regulations.

6. Radio Frequency Emissions. No non-tower WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC.

7. Historic Buildings. Non-tower WCFs may not be located on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or on any property or structure which has been designated by the Borough as being of historic significance.

8. Removal. In the event that use of a non-tower WCF is 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 WCFs or portions of WCFs shall be removed as follows:

- a. All abandoned or unused non-tower WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Borough.
- b. If the non-tower WCF or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the Borough, the non-tower 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.

9. Timing of Approval. 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 applicant in writing of any information that may be required to complete such application. Except as otherwise provided herein, the Borough shall make its final decision on whether to approve an application within sixty (60) calendar days of receipt of such application and shall advise the applicant in writing of such decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the Borough's 60-day review period.

10. 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.

11. Stealth Technology/Aesthetic Impact. The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough. The Borough Council retains the right to deny an application for the construction or placement of a non-tower WCF based upon visual and/or land use impact.

B. Substantial Change to Non-Tower WCF. The following additional regulations shall also apply to all non-tower wireless communication facilities that Substantially Change (see definitions) the physical dimensions of the WCF itself or the wireless support structure to which they are attached:

1. Retention of Experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Chapter. The applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.

2. Bond. Prior to the issuance of a permit, the owner of each individual non-tower WCF may, at its own cost and expense, be required by the Borough to obtain (and maintain), from a surety licensed to do business in Pennsylvania, a bond, or other form of security acceptable to the Borough Solicitor, in an amount of \$25,000 for each individual non-tower WCF, to assure the faithful performance of the terms and conditions of this section. The bond shall provide that the Borough may recover from the principal

and surety any and all compensatory damages incurred by the Borough for violations of this section, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Borough.

3. Timing of Approval. 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 applicant in writing of any information that may be required to complete such application. Within ninety (90) calendar days of receipt of a complete application for a non-tower WCF that constitutes a substantial change, the Borough shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the Borough's 90-day review period.

4. License and Insurance. In addition, the applicant shall submit a copy of its current Federal Communications Commission (FCC) license; the name, address and emergency telephone number for the operator of the communications tower or antennae; and 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 communications tower or antenna.

5. If such non-tower WCF that constitutes a Substantial Change is located outside the rights-of-way, then the following additional requirements shall apply:

a. Development Regulations. Non-tower WCFs shall be co-located on existing structures, such as existing buildings or tower-based WCFs subject to the following conditions:

- 1) The combined maximum height of the WCF and wireless support structure shall not exceed 125 feet.
- 2) If the WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
- 3) A minimum eight foot (8') high security fence shall surround any separate communications equipment building.

b. Design Regulations.

- 1) Non-tower WCFs, which are mounted to a building or similar structure, may not exceed a height of 15 feet above the roof or parapet, whichever is higher.
- 2) Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.

c. Removal, Replacement, Modification.

1) The removal and replacement of non-tower WCFs and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of antennae.

2) Any material modification to a wireless communication facility shall require a prior amendment to the original permit or authorization.

d. Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of this Chapter 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 property upon which a WCF is located at any time upon reasonable notice to the operator, to ensure such compliance.

C. Non-Tower WCFs Inside Rights-of-Way. In addition to the provisions above, if applicable, the following regulations shall also apply to all non-tower wireless communication facilities located in the rights-of-way (ROW), regardless of whether they constitute a Substantial Change or not:

1. Co-location. Non-tower WCFs in the ROW shall be co-located on existing poles, such as existing utility poles or light poles. If co-location is not technologically feasible, the WCF Applicant shall locate its non-tower WCF on existing poles or freestanding structures that do not already act as Wireless Support Structures with the Borough's approval.

2. Design Requirements.

a. WCF installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and joint utility poles, shall consist of equipment components that are no 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.

b. Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

c. Compensation for ROW Use. In addition to permit fees as described above, every non-tower WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each non-tower WCF shall pay an annual fee to the Borough to compensate the Borough for its costs incurred in connection with the activities described above. The annual ROW management fee for non-tower WCFs shall be determined by the Borough and authorized by resolution of Borough Council.

3. Time, Place and Manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all non-tower WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, 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.

4. Equipment Location. Non-tower WCFs and accessory equipment shall be located so 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 ROW as determined by the Borough. In addition:

- a. In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb or within an easement extending onto a privately-owned lot.
- b. Ground-mounted equipment shall be located underground. In the event an applicant can demonstrate, to the satisfaction of the Borough Engineer, that ground-mounted equipment cannot be undergrounded, then all such equipment shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Borough.
- c. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
- d. Any graffiti on any wireless support structure or on any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.
- e. Any underground vaults related to non-tower WCFs shall be reviewed and approved by the Borough.
- f. Non-tower WCFs shall not be located within an easement other than a utility easement.
- g. New ground mounted cabinets shall not be installed above ground directly in front of a residential structure.

5. Relocation or Removal of Facilities. Within sixty (60) 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 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 have determined 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.
- d. An emergency as determined by the Borough.

6. Insurance. The Borough shall be named as an additional insured on all applicable insurance policies.

§17.4 Tower-based Wireless Communication Facilities.

A. Tower-based Wireless Communication Facilities (WCF) shall be required to meet the following standards and regulations:

1. Zoning Districts. No tower-based WCF shall be located in a road right-of-way. Tower-based WCF shall only be permitted within the I – Industrial District of the Borough, and also upon any Borough-owned property in any zoning district subject to approval by Borough Council. The minimum distance between the base of a tower-based WCF and any adjoining property line or street right-of-way line shall equal 110% of the proposed height of the tower-based WCF unless it is demonstrated to the reasonable satisfaction of the Borough that, in the event of failure, the WCF is designed to collapse upon itself within a setback area less than the required minimum setback without endangering such adjoining property uses, their occupants, pedestrians, or traffic.

2. Use on a Lot. A tower-based WCF is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district.

3. Combined with Another Use. A tower-based WCF may be permitted on a property with an existing use or on a vacant parcel in combination with another agricultural, industrial, commercial, institutional or municipal use, subject to the following conditions:

a. The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the communications facility.

b. Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable district and shall be the area needed to accommodate the tower-based WCF and guy wires, the equipment building, security fence, and buffer planting.

c. Minimum Setbacks. The tower-based WCF and accompanying equipment building shall comply with the requirements for the applicable zoning district.

5. Co-location. An application for a new tower-based WCF shall not be approved unless the Borough finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be accommodated on an existing or approved structure or building. Any application for approval of a tower-based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a 2-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Borough that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

6. Standard of Design and Care. Any tower-based 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, the Uniform Construction Code (UCC), National Electric Safety Code, National Electric Code. Structure design certification from a Pennsylvania registered professional engineer is required and the tower capacity shall be indicated. Detailed construction and elevation drawings, indicating antenna locations and mounting design, shall be submitted by the applicant. Any tower-based 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.

7. Design Regulations.

a. The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough.

b. Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable antennae for future users.

c. Any Tower-Based WCF over forty (40) feet in height shall be equipped with an anti-climbing device, as approved by the manufacturer.

8. Wind. Any tower-based WCF structures shall be designed to withstand the effects of wind according to the standard design by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association.

9. Height. Any tower-based WCF shall be designed at the minimum functional height and shall not exceed a maximum total height of 150 feet, which height shall include all subsequent additions or alterations.

10. Lighting. Tower-based WCF shall not be artificially lighted, except as required by law and as may be approved by the Borough. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

11. 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.

12. Visual or Land Use Impact. The Borough reserves the right to deny an application for the construction or placement of any tower-based WCF based upon visual and/or land use impact.

13. Fence / Screen.

- a. A security fence having a minimum height of eight feet (8') shall completely surround any tower-based WCF or any building housing WCF equipment.
- b. An evergreen screen that consists of a hedge or a row of evergreen trees shall be located along the perimeter of the security fence.
- c. The WCF applicant shall submit a landscape plan for review and approval by the Borough for all proposed screening.

14. Identification. All tower-based WCF's shall post a notice in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency, subject to approval by the Borough.

15. Historic Buildings or Districts. No tower-based WCF may be located on a property or structure that is listed on either the National or Pennsylvania Registers of Historic Places or on any property or structure which has been designated by the Borough as being of historic significance.

16. Appearance. Towers shall be galvanized and/or painted with rust-preventive paint of an appropriate color to harmonize with the surroundings or otherwise designed to the satisfaction of Borough Council.

17. Accessory Equipment.

- a. Ground-mounted equipment associated to, or connected with, a tower-based WCF shall be underground or enclosed in a structure. In the event that an applicant can demonstrate that the equipment cannot be located underground to the satisfaction of the Borough Engineer, then the ground mounted equipment shall be screened from public view using stealth technologies, as described above.
- b. All 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. The communications equipment building shall not exceed a maximum footprint of 200 square feet. No building may be used as an office or as a broadcast studio. Employees are permitted to visit the site as often as necessary for maintenance and inspection of the building and facility. No building may be used for long term vehicle storage or for other storage.

18. Additional Antennae. As a condition of approval for all tower-based WCFs, the WCF applicant shall provide the Borough with a written commitment that it will allow other service providers to co-locate antennae on tower-based WCFs where technically and economically feasible. The owner of a tower-based WCF shall not install any additional antennae without obtaining written approval of the Borough.

19. Public Safety Communications. No tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.

20. Radio Frequency Emissions. No tower-based WCF may, by itself or in conjunction with other WCF's, generate radio frequency emissions in excess of the standards and regulations of the FCC.

21. Noise. Tower-based WCF's 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. Noise generated shall not result in a nuisance to residential properties.

22. Aviation Safety. Tower-based WCFs shall comply with all Federal and State laws and regulations concerning aviation safety, and any applicable airport zoning regulations.

23. Bond. Prior to the issuance of a permit, the owner of a tower-based WCF shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond or other form of security acceptable to the Borough Solicitor, in an amount of \$100,000 to assure the faithful performance of the terms and conditions of this Part. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations of this Part, after reasonable notice and opportunity to cure. The owner shall file the bond with the Borough.

24. License and Insurance. In addition, The applicant shall submit a copy of its current Federal Communications Commission (FCC) license; the name, address and emergency telephone number for the operator of the tower-based WCF or antennae; and 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 tower-based WCF, antenna, and related facilities.

25. Timing of Approval. Within thirty (30) calendar days of the date that an application for a tower-based WCF is filed with the Borough, the Borough shall notify the applicant in writing of any information that may be required to complete such application. All applications for tower-based WCFs shall be acted upon within 150 days of the receipt of a fully completed application for the approval of such tower-based WCF and the Borough shall advise the applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the 150-day review period.

26. 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 tower-based WCF, as well as related inspection, monitoring and related costs pursuant to a fee schedule adopted and as amended from time to time by the Borough Council.

27. Retention of Experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the tower-based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this section. The applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.

28. Nonconforming Uses. Nonconforming tower-based WCFs 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 Chapter.

29. Maintenance. The following maintenance requirements shall apply:

- a. Any tower-based 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 the upkeep of the facility in order to promote the safety and security of the Borough's residents.
- c. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

30. Inspection. The Borough reserves the right to inspect any tower-based WCF to ensure compliance with the provisions of this section 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 property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

31. Removal. In the event that use of a tower-based WCF 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 WCFs or portions of WCFs shall be removed as follows:

- a. All unused or abandoned tower-based WCFs and accessory facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the Borough.
- b. If the WCF and/or accessory facility is not removed within twelve (12) months 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 tower-based WCFs, including antennas, shall be removed within twelve (12) months of the time of cessation of operations. The Borough must approve all replacements of portions of a tower-based WCF previously removed.

§17.5 Special Regulations Applicable to Streetscapes Improvements.

The following limitations are placed upon any type of wireless communications facilities proposed to be installed in any fashion within the right-of-way of Route 41, within the sidewalks along Route 41 and

within such adjacent areas which have been improved by, or slated to be improved by, any government funded streetscapes improvement project. Such funds have been utilized to construct streetscape improvements, including sidewalks and streetlamps, to improve the overall appearance of the Borough, and such improvements will continue to be made. To allow facilities to be installed which would detract from the improvement streetscape appearance and which are not part of the Borough's overall planning would be in direct contradiction to the Borough's planning and design process. Thus, the following additional regulations are applicable to any and all proposed wireless communications facilities along the Route 41 corridor within the Borough:

1. Any proposed Wireless Communications Facilities shall be designed and situated to complement and enhance existing streetscape improvements.
2. Non-tower Wireless Communications Facilities may be permitted provided the installation of such facilities shall not detract from the existing streetscape improvements and shall only be installed if designed to complement and add to the streetscape. The determination of such compatibility shall be within the sole discretion of Borough Council.

§17.6 Timing of Approvals and Compliance with State and Federal Law.

- A. Timing of approvals. Applications for installation of any and all wireless communications facilities shall be processed in a timely manner and in compliance with the required time frames for municipal review and action as established by state and federal law and regulations.
- B. Permit fees. The Borough may assess appropriate, fair and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing applications for approval of wireless communications facilities as set forth in fee schedules established by the Borough.
- C. Consistency with state and federal laws and regulations. The provisions contained herein regulating wireless communications facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances. In which case, the more stringent provisions of local ordinances shall remain in effect and shall control in such instances."

SECTION 3. All other ordinances or resolutions or parts thereof, conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid

sentence, clause, section or part thereof not been included herein.

SECTION 5. Upon any future codification of the Borough's ordinances, General Code is hereby authorized to make any necessary formatting, section number updates and numerical changes needed in order for this Ordinance to be made consistent with the formatting, section numbers and numbering standards application to the Borough Code as published by General Code.

SECTION 6. This Ordinance shall be effective upon enactment as by law provided.

PASSED by Borough Council this _____ day of _____, 2021.

BY: _____
William D. Shore, President

APPROVED this _____ day of _____, 2021.

BY: _____
Steve Cummings, Mayor

ENACTED this _____ day of _____, 2021.

BY: _____
Rebecca Brownback, Borough Manager/Secretary

I HEREBY CERTIFY the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the _____ day of _____, 2021.

BY: _____
Rebecca Brownback, Borough Manager/Secretary

Secretary

From: Kimberly Venzie <kvenzie@buckleyllp.com>
Sent: Wednesday, November 17, 2021 4:29 PM
To: Becky Brownback (secretary_avondale-boro@comcast.net)
Cc: Wendy Gavin
Subject: Avondale Borough - WCF Ordinance and SWF Ordinance & Related Notice
Attachments: Avondale Boro WCF & SWF Ord Notice 11 30 & 12 7.docx; Avondale Borough WCF Ordinance Update 2021.doc; Avondale Boro SWF Ordinance 2021.docx

Becky:

Attached above is the notice and the final ordinances. The notice has been placed with the Daily Local News and the ordinances placed on file.

Please post both the notice and the ordinances on the Borough's website by November 30th. These ordinances are to be placed on the December 21st BC agenda. There is also an associated Resolution which I will sent to you closer to the date – it does not need to be advertised but DOES need to be placed on the December 21st agenda.

Please also forward this email and the above to the members of Borough Council

Thank you.

-Kim

Kimberly P. Venzie, Esquire
BUCKLEY, BRION, MCGUIRE & MORRIS LLP
118 W. Market Street, Suite 300
West Chester, PA 19382-2928
Office: (610) 436-4400
Email: kvenzie@buckleyllp.com
www.buckleyllp.com

ORDINANCE NO. 2021-273

BOROUGH OF AVONDALE

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF AVONDALE TO ADOPT A NEW ORDINANCE ENTITLED "SMALL WIRELESS FACILITIES" TO PROVIDE FOR NEW ORDINANCE PROVISIONS TO ALLOW FOR, AND REGULATE, SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE BOROUGH OF AVONDALE.

BE IT ENACTED AND ORDAINED, and it is hereby enacted by authority of the Council of the Borough of Avondale, as follows:

SECTION 1. A new ordinance entitled "Small Wireless Facilities" is hereby enacted as part of the Code of the Borough of Avondale and shall include the following ordinance provisions:

SMALL WIRELESS FACILITIES

§1 -101. PURPOSE AND INTENT.

The purpose of this Ordinance is to establish procedures and standards, consistent with all applicable federal and state, laws, for the consideration, permitting, siting, construction, installation, collocation, modification, operation, regulation and removal of Small Wireless Facilities ("SWF") in the public right-of-way of streets and roads.

(A) The intent of this section is to:

- (1) Establish basic criteria for applications to install and/or collocate SWF in the public right-of-way;
- (2) Ensure that SWF are appropriately designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
- (3) Preserve the character of the Borough by minimizing the potentially adverse visual impact of SWF through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

- (4) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of SWF for such facilities;
- (5) Comply with, and not conflict with or preempt, all applicable state and federal laws, as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

§2 -102. APPLICABILITY.

- (A) Subject to the provisions of this Ordinance and granting of the required permits, an applicant may locate and/or collocate a SWF and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public right-of-way.
- (B) An applicant and/or operator shall comply with this Ordinance and any rules, regulations, and design guidelines adopted by the Borough that are consistent with this Ordinance for the installation and/or collocation of a SWF and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the public rights-of-way, unless otherwise prohibited by state or federal law.
- (C) All SWF shall be constructed and maintained so as not to impede or impair public safety or the legal use of the public right-of-way by the Borough, the traveling public, or other public utilities.
- (D) Nothing in this Ordinance precludes the Borough from applying its generally applicable health, safety, and welfare regulations when acting on an application for a permit for a SWF in the public right-of-way.

§3 -103. DEFINITIONS.

COLLOCATION or COLLOCATE. The mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DECORATIVE POLE OR STRUCTURE. A pole, arch, or structure placed in the public right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed or are permitted to be placed in accordance with nondiscriminatory Borough practices except for any of the following:

- (1) Electric lighting;

- (2) Specially designed information or directional signage;
- (3) Temporary holiday or special event attachments;
- (4) Small Wireless Facilities.

DESIGN GUIDELINES. Means those detailed design guidelines, specifications and examples promulgated by resolution that address, on a nondiscriminatory basis, the design and installation of facilities in the public rights-of-way, insofar as they do not conflict with any federal or state law, rule and regulation, including this Ordinance.

TOWN CENTER. An area that is zoned or otherwise designated as the Town Center under municipal, state or federal law and for which the Borough maintains and enforces in an uniform and nondiscriminatory basis with regard to all users of the public right-of-way pursuant to this Ordinance.

LOCATE. Means to install, mount, maintain, modify, operate, or replace SWF.

OWNER. A provider, operator or owner of SWF (who may also be the applicant).

PUBLIC RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public way, public alley, public sidewalk, and any other land dedicated or otherwise designated for the same now or hereafter held by the Borough or other governmental entity.

SMALL WIRELESS FACILITY "SWF". A type of Wireless Communication Facility (WCF) as specifically defined by the Federal Communications Commission in Part 1 of Title 47 of the Code of Federal Regulations as follows, or as hereinafter amended:

(A) "Small Wireless Facility" means a facility that meets each of the following conditions:

- a. 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 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
- b. Each antenna (excluding associated antenna equipment) are cumulatively no more than three cubic feet in volume; and

- c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- d. The facility does not require antenna structure registration under 47 CFR Part 17.
- e. The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
- f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

BOROUGH-OWNED POLE. Means (i) a Utility Pole owned or operated by the Borough, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Borough such as a Decorative Pole.

TRANSMISSION POLE. A pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

UTILITY POLE. A pole or similar structure that is designed for, or used, for carrying electric distribution lines or for carrying cables or wires for electric, cable, or telecommunications service or for lighting, traffic control, or directional signage.

WIRELESS SUPPORT STRUCTURE. A freestanding structure, including a monopole, Decorative Pole, Borough-Owned Pole, Transmission Pole, and Utility Pole, or other existing or proposed structure designed to support or capable of supporting SWF.

§4 -104. APPLICATION PROCESS.

- (A) *Application Required.* An applicant must apply to the Borough to locate a new SWF and/or collocate any portion of a SWF on an existing Wireless Support Structure or to construct, maintain, modify, operate, or replace Wireless Support Structures in, along, across, upon, and under the Public Right-of-Way. Anyone seeking to perform any of these actions shall first duly file a permit application with the Borough, in accordance with the requirements of this Ordinance and additional requirements as set forth in the Small Wireless Facilities Design Guidelines as adopted by resolution and which may be modified from time to time by further resolution.
- (B) *Permit Required.* No person shall occupy or use the public right-of-way without first obtaining, under this Ordinance, the required permit from the

Borough. Before placing SWF in the public right-of-way, an owner must apply for and receive a permit. This provision shall not be construed to waive any application fees or any other construction or work permit necessary for work in the Borough. While notice to the Borough is required, a permit from the Borough shall not be required for routine maintenance or same-size and type replacement of Small Wireless Facilities that do not interfere with pedestrian or vehicular traffic.

(C) *Required Application Materials.* Unless otherwise required by state or federal law, all applicants shall submit to the Borough all materials and information associated with each application as outlined below for the application to be considered complete:

- (1) The Applicant's name, address, telephone number and e-mail address;
- (2) Facility owner's name, address, telephone number and email address, if different from Applicant;
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application, and if warranted written authorization for those consultants to speak on behalf of the applicant.
- (4) A description of the Small Wireless Facilities being proposed in order for the Borough to verify that the proposed facilities are Small Wireless Facilities as specifically defined by the FCC;
- (5) A mapping showing the exact location of the proposed Small Wireless Facilities in the case of multi-site applications and photo simulations/depictions of the type and style of the proposed Small Wireless Facilities (which should be in compliance with the Borough's Small Wireless Facility Design Guidelines).
- (6) A description of the proposed scope of work for the location or Collocation of the SWF. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (7) Verification that the SWF shall comply with this Ordinance, including all applicable Small Wireless Facilities Design Guidelines;

- (8) Verification of payment of the application fees, annual municipal consent or administrative fee for use of Public Rights-of-Way and acknowledgment of its continuing annual obligation;
- (9) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the Federal Communications Commission, or a statement that it is not required;
- (10) A copy of an approved Pennsylvania Department of Transportation permit and all documents required by PennDOT as part of the encroachment permit application, if the proposed location is within a PennDOT Right-of-Way; and,
- (11) The applicant must provide a statement that the applicant has a lease, attachment agreement or other authorization from the owner of the Wireless Support Structure proposed for Collocation.

§5 -105. FEES AND COSTS.

- (A) *Rights-of-Way Access Fees:* Each individual Applicant will be subject to an annual Rights-of-Way access fee if locating within a Borough owned Public Right-of-Way. Such fees shall not be in excess of those amounts deemed reasonable by the Federal Communications Commission.
- (B) *Application processing costs.* Unless otherwise provided by law, all applications for permits pursuant to this Ordinance shall be accompanied by an application processing cost which shall be the following: 1) application costs for Small Wireless Facilities addressed in a consolidated application shall be \$500 which may include up to five Small Wireless Facilities, and an additional \$100 for each Small Wireless Facility beyond five, up to and including 30 total Small Wireless Facilities per one application, and 2) application costs of \$1,000 for a new pole (not a collocation) intended to support one or more Small Wireless Facilities.
- (C) *Compensation.* In addition to the applicable fee as specified above, every permit shall include as a condition the Applicant's agreement to pay a Right-of-Way access fee of \$200 per Small Wireless Facility per year, and/or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Borough. Additionally, if the Small Wireless Facilities is proposed to be located upon a Borough-Owned Pole, and the Borough consents to such Collocation, an additional annual fee of \$70 per Small Wireless Facility shall be payable to the Borough for such placement.

- (D) Small Wireless Facilities collocated on Borough-owned utility poles or structures outside the Borough rights-of-way are not subject to the rate limitations in this Ordinance. Additionally, if the rate limitations imposed by the Federal Communications Commission is altered in the future, the Borough may alter its fees by resolution to be consistent with the Federal Communications Commission's determinations or as might be otherwise altered by the state or federal governments.
- (E) *Cease Payment.* Upon thirty (30) days written notice to the Borough, an Owner is authorized to remove its Small Wireless Facility from a Borough-Owned Pole and cease paying the annual fee to the Borough as of the next due date for payment following the removal, provided; however, the Owner shall pay its pro-rata share of the remaining term and expenses, if any.
- (F) *Make-ready.* For Borough-Owned Poles, the applicant shall reimburse the Borough for expenses for any reasonable make-ready work, if any are required. The Borough shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested SWF, including pole replacement if necessary, within thirty (30) days after receipt of a completed request. The Borough may also require the Applicant to perform the make-ready work, including pole replacement if necessary, and the Applicant would be responsible for its own costs incurred for such work.
- (G) There may be the occasion whereby the Borough has already prepared Borough-Owned Poles for collocation or multiple collocations via a relationship with a third-party contractor. In such circumstances, if deemed a reasonable and feasible alternative, the applicant may be required to site its Small Wireless Facility within/upon such Borough-Owned Poles, and the applicant shall reimburse the Borough for the applicant's percentage of costs incurred to make such Borough-Owned Pole collocation-ready for the applicant.

§6-106. APPLICATION REVIEW TIME FRAMES.

- (A) Permit Application Review.
 - (1) Collocation of SWF. Absent a written agreement to the contrary between the Borough and the Applicant, the Borough shall grant or deny an application to collocate, or to replace or modify any portion of a SWF on, or associated with, an existing wireless support structure not later than sixty (60) days after the date of filing by an entity of a completed application.
 - (2) Installation of New SWF. Absent a written agreement to the contrary between the Borough and the Applicant, the Borough shall grant or deny an application for a SWF on a new structure within the Public

Right-of-Way not later than ninety (90) days after the date of filing by an entity of a completed application.

- (3) Removal of SWF. The Borough shall act on requests to remove Wireless Support Structures associated with SWF from the Public Right-of-Way typical to the review timeframes for the Public Right-of-Way permit required for this activity.
- (4) Completeness. Within ten (10) business days of receiving an application, the Borough will determine and notify the Applicant whether the application is complete; or if an Application is incomplete, the Borough must specifically identify the missing information.
- (5) *Application Denials.*
 - (a) The Borough shall not unreasonably withhold or deny an application for a permit to place a SWF within the Public Right-of-Way.
 - (b) If an application is denied, the Borough will provide in writing its reasons for denying the request, including, if applicable, specific references to any applicable law supporting the denial.
 - (c) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Borough and resubmit the Application within thirty (30) days of the denial, and the Borough will approve or deny the revised Application within thirty (30) days of receipt of it, unless additional deficiencies are discovered.

§7 -107. CONSOLIDATED APPLICATION FOR MULTIPLE SWF.

- (A) Applicants seeking to construct, modify, collocate, or replace more than one SWF, may file, at the applicant's discretion, a consolidated application for up to 30 requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the SWF subject to the following:
 - (1) This single application may be filed for multiple SWF only if they are of substantially the same type.
 - (2) The Borough must separately address SWF for which incomplete information has been received or which are denied and it must grant

a permit for any and all sites in a single application that it does not deny subject to the requirements of this Ordinance.

§8-108. MAXIMUM HEIGHT, PROXIMITY OF SWF AND ALTERNATE LOCATIONS.

- (A) Maximum Height. The maximum height of a new pole for the installation of a SWF is limited to a maximum height of fifty (50) feet, subject to any restrictions imposed by the Small Wireless Facility Design Guidelines. Applicant may collocate on existing Wireless Support Structures provided the Small Wireless Facility's height still qualifies as a Small Wireless Facility as defined by this Ordinance and as by the Federal Communications Commission.
- (B) Alternate Locations. If an applicant is seeking to install a new Wireless Support Structure as part of its application, the Borough may propose that the Small Wireless Facility be located on an existing utility pole or existing Wireless Support Structure within one hundred (100) feet of the proposed location. The Applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits, acts as an effective prohibition under federal law, or additional unreasonable costs will be incurred as determined by the Applicant. If the Applicant refuses an alternate location based on the foregoing, the Applicant shall provide legally competent evidence in the form of a written certification describing the property rights, technical limits or cost reasons that prevent the alternate location from being utilized.
- (C) The Borough may reserve space on Borough-Owned Poles for future public safety uses or for Borough electric utility uses. Such reservation may preclude collocation of Small Wireless Facilities if the Borough reasonably determines that the Borough's poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Borough-Owned Poles.
- (D) In certain circumstances, collocation is not feasible and a new pole needs to be installed by the Applicant. In such cases, a Small Wireless Facility located on a new pole shall be separated by 150 feet from any other Small Wireless Facility located upon a pole with that singular purpose (meaning it is not a collocation but another stand-alone SWF pole).

§9 -109. GENERAL DESIGN REQUIREMENTS.

- (A) The Borough has, or shall, adopt Small Wireless Facility Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory

manner that reasonably match the aesthetics and character of the immediate area.

- (B) The Small Wireless Facility Design Guidelines will provide examples of SWF preferences including visual depictions (if such depictions are readily available and identified by the Borough).
- (C) The provisions in this Ordinance shall not limit or prohibit the Borough's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Small Wireless Facility Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) All Small Wireless Facilities and associated equipment located within the Public Right-of-Way shall be located such that it meets ADA requirements and does not hinder, obstruct or impede usual pedestrian and vehicular travel.
- (E) The Borough shall have authority to update or supplement the Small Wireless Facility Design Guidelines to address relevant changes in law, technology, or administrative processes.
- (F) Wireless Support Structure Design Standards
 - (1) General Guidance
 - (a) SWF equipment must be indistinguishable from the support pole or structure to the greatest degree possible using matching colors, textures, and materials. The antennas and related equipment shall be in a color that will provide the most camouflage.
 - (b) All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible.
 - (c) Screening and equipment enclosures shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment.
 - (d) Casing to enclose all wires, antennas, and other small wireless facility equipment may be mounted on top of existing and new poles in a cylinder shape to look like an extension of the pole.

- (e) Brand logos and other signage are prohibited on all SWF except contact information to be used by workers on or near the SWF and as otherwise required by federal or state law. Signage will be no larger than required to be legible from street level.

§10 -110. TOWN CENTER DISTRICT.

- (A) This Ordinance may not be construed to limit the Borough's authority to enforce historic preservation zoning regulations consistent with the local, state or federal law including the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.
- (B) As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Town Center District, the Applicant shall comply, to the greatest extent possible, with the design and aesthetic standards of Town Center District to minimize the negative impact to the aesthetics in these districts.
- (C) New Districts. Nothing in this Ordinance shall prohibit or otherwise limit the Borough from establishing subsequent new town center or historic districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the new district remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures. If a wireless services provider or a wireless infrastructure provider replaces such facilities in a manner that does not comply with this Ordinance, or if a wireless services provider or a wireless infrastructure provider relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the newly established district.

§11 -111. GENERAL CONDITIONS AND REQUIREMENTS OF PERMIT APPROVAL.

- (A) *Permit Effect and Duration.* The Borough's approval term for collocation or a new pole shall be for a period of nine (9) months. If construction or installation is not begun within nine (9) months of the permit issuance, the Owner shall be required to submit a new application and associated fees. A permit from the Borough authorizes an Owner to undertake only certain activities in accordance with the Ordinance and does not create a property right or grant any authority whatsoever to the Owner to impinge upon the rights of others.

- (B) *Compliance with all applicable laws and Borough Code.* Owner shall always maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules. If state or federal standards and regulations are amended, the owners of any portion of SWF governed by this ordinance shall bring any facilities and/or structures into compliance with the revised standards and regulations within the time mandated by such amendment or, if no time is mandated, as soon as practicable under the circumstances, but no longer than ninety (90) days. The Borough is not required to provide notice of any amendments in order to trigger this responsibility. Failure to bring SWF into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- (C) *Inspections; emergencies.* The Borough or its designee may inspect any portion of SWF in the right-of-way upon reasonable notice to the Owner. The Owner shall cooperate with all inspections. The Borough reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. If circumstances permit, the Borough shall notify the Owner and provide the opportunity to move such facilities, poles, or support structures prior to the Borough doing so, and the Borough shall notify the Owner after doing so.
- (D) *Relocation or adjustment as requested by Borough.* If requested by the Borough, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an Owner shall relocate or adjust its facilities within the Public Right-of-Way at no cost to the Borough, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.
- (E) *Contact information for responsible parties.* Within 10 days of any changes to any of the contact information provided in the application, the Owner shall provide notice of the change to the Borough.
- (F) *Indemnification.* Any entity who owns or operates SWF in the Public Right-of-Way shall indemnify, protect, defend, and hold the Borough and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the entity who owns or operates the SWF and wireless service in the right- of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the

operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

- (G) *Good condition required.* SWF 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 menace or endanger the health, safety or welfare of any person or property. All SWF shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers.
- (H) *Relocation for public improvement projects.* To the extent that the Borough requires it to do so in the reasonable exercise of its police powers, Owner shall remove and relocate the permitted SWF at Owner's sole expense to accommodate construction of a public improvement project by the Borough.

§12 -112. REMOVAL OF SWF IF USE DISCONTINUED OR ABANDONED.

- (A) If a SWF is discontinued for a period of 120 days or is abandoned without notice from the owner, it shall be considered abandoned and the Borough may remove it at the owner's expense if the Borough provides written notice of its intent to remove under this section and, within thirty (30) days after receipt of such written notice, the Owner of the SWF does not reply to the Borough in writing that the SWF continues to be in operation. Costs for such removal shall be as collectible as provided by law, including the filing of a municipal lien.
- (B) The Borough reserves the right to inspect and to request information from the Owner, which the Owner shall provide following such request, as to the continued use of the operator's SWF(s) within the right-of-way.

§13 -113. SAFETY REQUIREMENTS.

- (A) Prevention of failures and accidents. Any person who owns or operates a portion of a SWF sited in the Public Right-of-Way shall always employ ordinary and reasonable care and install and maintain it using industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (B) Compliance with fire safety and FCC regulations. All SWF, including, but not limited to wires, cables, fixtures, and other equipment, shall be installed and maintained in compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property or any existing public/private utilities or public safety systems.

- (C) Each attachment of wireless facilities should bear a marker or insignia legible at street level, identifying the Owner of the SWF and contact information

§14 -114. EXCEPTIONS TO APPLICABILITY.

- (A) Nothing in this Ordinance authorizes the collocation of small wireless facilities on:
 - (1) Property owned by a private party without the written consent of the property owner;
 - (2) Property owned or controlled by a unit of local government that is not located within Public Rights-of-Way without the written consent of the unit of local government (local governments are, however, required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the local government or located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses);
 - (3) A privately-owned utility pole or wireless support structure, without the consent of the property owner; or
 - (4) Property owned, leased or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes, without the consent of the affected district.

§15 -115. APPEALS AND CONSISTENCY WITH STATE AND FEDERAL LAWS.

The appeals process shall be as provided for, and as set forth, by state and federal laws including Rulings issued by the Federal Communications Commission. The provisions contained herein regulating Small Wireless Facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances. In which case, the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.

§16 -116. SEVERABILITY.

The provisions of this Ordinance are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such Ordinance to other persons or circumstances shall not be made invalid as well. It

is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

§17 -117. PENALTIES.

Any person or corporation who shall be convicted of a violation of any of the provisions of this chapter before any District Justice shall be sentenced to pay a fine of not more than \$1,000, together with costs of prosecution, or to imprisonment in the county jail for a term not to exceed 30 days, or both. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Chapter that is violated shall also constitute a separate offense. Nothing herein shall prevent the Borough from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations.

SECTION 2. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of Avondale that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. GENERAL CODE. Upon future codification of the Borough's ordinances, General Code is hereby authorized to make any necessary formatting and numbering changes needed in order for this Ordinance to be made consistent with the formatting and numbering standards applicable to the Borough Code as published by General Code.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS ____ DAY OF December, 2021.

Passed by Borough Council, this ____ day of December, 2021.

President, Borough Council

Approved by the Mayor, this ____ day of December, 2021.

Mayor

Enacted, this ____ day of December, 2021.

Borough Secretary