

OFFICIAL

**BOROUGH OF CRAFTON
ORDINANCE NO. _____**

AN ORDINANCE OF THE BOROUGH OF CRAFTON,
ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING
CHAPTER 225 OF THE CRAFTON CODE OF ORDINANCES,
ZONING, AS AMENDED, TO REGULATE WIRELESS
COMMUNICATIONS FACILITIES LOCATED OUTSIDE THE
PUBLIC RIGHT-OF-WAY AND WIRELESS
COMMUNICATIONS FACILITIES TALLER THAN 50 FEET.

WHEREAS, Section 1202(5) of the Borough Code, 8 Pa.C.S.A. § 1202(5), provides the Council of the Borough of Crafton (“Borough”) with the power to make regulations as may be necessary for the health, safety, morals, general welfare and cleanliness and beauty, convenience, comfort and safety of the Borough; and

WHEREAS, Chapter 225 of the Borough of Crafton Code of Ordinances, Zoning, as amended, (“Zoning Ordinance”) regulates zoning and land use in the Borough consistent with the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, *et seq.*, (“MPC”) in order to maintain, preserve, and protect the public health, safety, and welfare; and

WHEREAS, the Council for the Borough has amended Chapter 193 of the Borough Code of Ordinances, Streets and Sidewalks, to regulate the placement, siting, and procedures for Wireless Communications Facilities located in the public right-of-way; and

WHEREAS, the Council of the Borough desires to amend the Zoning Ordinance to regulate Wireless Communications Facilities located outside the public right-of-way and Wireless Communications Facilities greater than fifty feet in height; and

NOW, THEREFORE, be it ordained and enacted by the Borough Council of the Borough of Crafton, and it is hereby ordained and enacted by and with the authority of same, incorporating the above recitals by reference.

SECTION 1. Repealer of Certain Definitions. The definitions of “Communications Antenna”, “Communications Equipment Building”, “Communications Equipment Cabinet”, “Communications Tower”, and “Communications Tower Height” are hereby repealed and removed as definitions from Section 225-12 of the Borough Zoning Ordinance.

SECTION 2. Section 225-12, Specific Meanings, of the Zoning Ordinance which sets forth the particular meanings for words and phrases for the purposes of the Zoning Ordinance is amended by inserting the following definitions:

ANTENNA

Any apparatus designed for the purpose of the transmission and/or reception of radio frequency ("RF") radiation, to be operated or operating from a fixed location to facilitate wireless communications services including, but not limited to, the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.

APPLICANT

Any person that submits an application to the Borough to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the public right-of-way.

COLLOCATION

The mounting or installation of a Wireless Communications Facility on an existing Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

DESIGN GUIDELINES

Those detailed design guidelines and examples for the design and installation of structures supporting Wireless Communications Facilities in the public right-of-way, which are effective insofar as they do not conflict with FCC rules and regulations or the design standards of this chapter.

PUBLIC RIGHT-OF-WAY ("ROW")

Real property for or devoted to: (1) public transportation purposes; or (2) the placement of the Borough's municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right-of-way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the Borough.

SUBSTANTIAL CHANGE

A collocation or modification that:

- (a) Increases the overall height of an existing Support Structure more than 10% or 10 feet;
- (b) Increases the width more than 6 feet from the edge of an existing Support Structure;

(c) Involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets;

(d) Involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets;

(e) Involves excavation or deployment of equipment outside the area in proximity to the support structure and other Transmission Equipment already deployed on the ground;

(f) Would defeat the existing concealment elements of the support structure as determined by the Borough; or

(g) Violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change.

SUPPORT STRUCTURE

A pole or other structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function for collocation. This term includes vertical support structures for traffic lights but does not include horizontal structures to which signal lights or other traffic control devices are attached.

WIRELESS COMMUNICATIONS FACILITY (“WCF”)

The equipment and network components, including Antennas, transmitters and receivers and associate ancillary equipment installed and operated for the transmission of wireless communications services. The term does not include Support Structure.

WIRELESS COMMUNICATIONS SERVICE

Any FCC-licensed or authorized wireless communications service including, without limitation, any personal wireless services, as defined in 47 U.S.C. § 332(c)(7).

SECTION 3. Section 225-74(B) of the Zoning Ordinance, which sets forth the authorized uses in the C-2 Commercial Core District, is amended by deleting the stricken text and adding the underlined text:

§ 225-74. Authorized uses.

In the C-2 Commercial Core District only the following uses are authorized:

B. Conditional Uses.

(1) Principal uses.

(c) ~~Communications antenna mounted on an existing building, subject to §225-118I.~~ Wireless Communications Facilities Greater than 50 Feet in Height and Wireless and Wireless Communications Facilities located outside the Public Right-of-Way, subject to § 225-118I.

SECTION 4. Section 225-118(I) of the Zoning Ordinance, Standards for Specific Uses, which details the specific standards applicable to conditional use applications for “Communications antenna mounted on an existing building” is hereby deleted in its entirety and replaced as follows:

§ 225-118. Standards for specific uses.

In addition to the general standards and criteria for all conditional uses and uses by special exception listed in Section 225-117 of the Crafton Code, an application for any of the following uses which are listed in any zoning district as a conditional use or use by special exception shall comply with the applicable standards and criteria specified below for that use:

I. **Wireless Communications Facilities Located Outside of the Public Right-of-Way and WCFs Exceeding 50 Feet in Height.** WCFs located outside the public right-of-way and WCFs that exceed 50 feet in height are permitted as a conditional use in the C-2 Zoning District and shall comply with the regulations set forth below.

- (1) All WCFs that are located outside of the public right-of-way and/or exceed 50 feet in height shall comply with § 225-117 as well as the standards below. WCFs that are located in the public right-of-way with a height of 50 feet or less shall comply with Chapter 193, Article VII of the Borough of Crafton Code of Ordinances, but are exempt from the requirements below.
- (2) **Noncommercial Usage Exemption.** Borough citizens utilizing satellite dishes and antennas for the purpose of maintaining television, phone, and/or internet connections at their respective residences shall be exempt from this section.
- (3) **Nonconforming Uses.** Nonconforming WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored, in kind, at their former location, but must otherwise comply with the terms and provisions of this section, except that any collocation approved under a former ordinance shall be permitted to continue consistent with the requirements of Chapter 193 of the Borough of Crafton Code of Ordinances, the Pennsylvania Wireless Broadband Collocation Act, 53 P.S. § 11702.1,

et seq. (“WBCA”), and applicable federal law.

- (4) The applicant shall demonstrate that it is licensed by the Federal Communications Commission (“FCC”) to operate the proposed WCF.
- (5) The applicant shall demonstrate that the proposed WCF complies with safety standards now or hereafter established by the FCC. No WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (6) The applicant shall demonstrate compliance with all applicable Federal Aviation Administration (“FAA”) and any applicable airport zoning regulations.
- (7) An applicant for a WCF under this section must demonstrate that a significant gap in wireless coverage or capacity exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least-intrusive means by which to fill that gap in wireless coverage or capacity. The existence or nonexistence of a gap in wireless coverage or capacity may be a factor in the Borough's consideration of and decision on an application for approval of WCFs.
- (8) Any applicant proposing a new WCF subject to this section shall demonstrate that a good faith effort has been made to obtain permission to mount the Antenna(s) on an existing support structure within the public right-of-way. A good faith effort shall require that all owners of potentially suitable structures within a ¼-mile radius of the proposed WCF shall be contacted and that one or more of the following reasons for not selecting an alternative support structure apply:
 - (a) The proposed equipment would exceed the structural capacity of the existing support structure and reinforcement of the structure cannot be accomplished at a reasonable cost.
 - (b) The proposed equipment would cause radio frequency interference with other existing and proposed equipment for that existing building, existing public utility storage or transmission structure and the interference cannot be prevented at a reasonable cost.
 - (c) Existing buildings or towers do not have adequate space, access, or height to accommodate the proposed equipment.
 - (d) Addition of the proposed equipment would result in nonionizing

electromagnetic radiation levels which exceed adopted federal or state emission standards.

- (9) Any WCF shall be designed at the minimum functional height. All WCF applicants must submit documentation to the Borough justifying the total height of the structure. The maximum total height of any WCF shall not exceed 180 feet, as measured vertically from the ground level to the highest point on the structure, including antennas and subsequent alterations. WCFs greater than 50 feet are prohibited from being located in the public right-of-way.
- (10) All parts of the WCF shall be set back from the property line at least 50 feet. If the Support Structure is located on property which adjoins a residential zoning district, the setback shall be at least equal to the height of the support structure.
- (11) A security fence having a minimum height of ten feet shall completely surround the WCF, as well as guy wires, or any building housing WCF equipment. The support structure shall be equipped with anti-climbing devices as approved by the manufacturer for the type of installation proposed.
- (12) The applicant shall submit evidence that the WCF and its method of installation has been certified by a registered engineer to be structurally sound and able to withstand wind and other loads in accordance with the Borough Building Code and accepted engineering practice. All plans and drawings shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.
- (13) At least one off-street parking space shall be provided on the site to facilitate periodic visits by maintenance workers.
- (14) Ground-based transmission equipment is discouraged; however, if permitted, it shall comply with the height and yard requirements of the zoning district for accessory structures.
- (15) The exterior finish of the WCF shall be compatible with the immediate surroundings. The accessory structures shall be maintained.
- (16) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of this Section and any other provisions found within the Borough of Crafton Code of Ordinances 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. For WCFs exceeding 50 feet in height, the owner must submit yearly inspections conducted by a structural

engineer at the owner's expense. Any structural faults identified by the inspection shall be corrected immediately and reinspected and certified to the Borough by a structural engineer at the owner's expense.

- (17) Landscaping may be required by Borough Council, upon recommendation by the Planning Commission, which is suitable to the proposed location of the WCF proposed in order to provide screening of the facilities from adjacent streets or residential properties.
- (18) Fees. The Borough may assess appropriate and reasonable permit fees, as delineated or limited by the WBCA or any other applicable state and/or federal laws or regulations, which are directly related to the Borough's actual costs in reviewing and processing applications for approval as well as related inspection, monitoring and related costs.
- (19) Retention of Experts. Except as limited by the WBCA or other applicable statute, 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 section. The applicant and/or owner of the WCF shall reimburse the Borough for all reasonable costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (20) Shot Clock. Within 30 calendar days of the date that an application for a WCF under this Section is received, the Borough shall notify the applicant in writing of any information that may be required to complete such application. All such applications shall be acted upon within 90 days of the receipt of a fully-completed application for the approval 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 ninety-day review period.
- (21) Signs. Signage of any type, except for: signage required by law, safety signage, and signage identifying the WCF's operator and subsequent contact information, is prohibited from being attached to or displayed upon any WCF.
- (22) Historic Buildings. No WCF may be located on a building or structure that is listed on either the National or Pennsylvania Register of Historic Places, or is eligible to be so listed, or is listed on the official historic structures and/or historic districts list maintained by the Borough or has been designated by the Borough to be of historical significance. This restriction shall not apply in instances in which the historic building or structure in question holds WCF equipment on the date of adoption of this section.

- (23) Insurance. Where permitted by law, each person that owns or operates a WCF greater than 50 feet in height or located outside the public right-of-way shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the WCF.
- (24) Indemnification. Each person that owns or operates a WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the WCF. Each person that owns or operates a WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- (25) Maintenance.
- (a) WCFs shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
- (b) 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) Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notification by the Borough.
- (26) Identification Signs. All WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency.
- (27) Licenses. Each person that owns or operates a WCF shall submit a copy of its current FCC license (if a licensee), including the name, address, and emergency telephone number for the operator of the facility.
- (28) Removal. In the event that use of a 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:

- (1) All unused or abandoned WCFs and accessory facilities shall be removed within six months of the cessation of operations at the site, unless a time extension is approved by the Borough.
 - (2) If the WCF and/or accessory facility is not removed within six 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.
 - (3) Any unused portions of WCFs, including antennas, shall be removed within six months of the time of cessation of operations. The Borough must approve all replacements of portions of a WCF previously removed.
- (29) To the extent permitted by the WBCA or any other applicable state and federal laws or regulations, the Borough Council may impose additional restrictions as it deems necessary to ensure that there is no adverse impact upon the functioning of a district, municipal infrastructure (including, but not limited to the Borough's water and sewer systems, transportation network, etc.), or adjacent land uses.

SECTION 5. The terms, conditions and provisions of Section 225-118(J), Communications Tower, of the Borough Zoning Ordinance is repealed and replaced in its entirety as follows:

J. (Reserved)

SECTION 6. Should any sentence, section, clause, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, other than the part declared to be invalid.

SECTION 7. All prior ordinances are hereby repealed in whole or in part to the extent inconsistent herewith.

SECTION 8. This Ordinance shall take effect in accordance with applicable law.

ORDAINED and **ENACTED** this __ day of _____, 2020, by the Council of the Borough of Crafton in lawful session duly assembled.

ATTEST:

BOROUGH OF CRAFTON

Russell McKibben
Borough Manager/Secretary

By: _____
Phillip Levasseur
President, Borough Council

EXAMINED and **APPROVED** this _____ day of _____, 2020

James Bloom, Mayor