**CHAPTER 13**

**LICENSES, PERMITS AND GENERAL BUSINESS REGULATIONS**

**Part 2**

**Small Cell Wireless Facilities**

**§201. Definitions.**

ANTENNA – Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.

APPLICABLE CODES – Any of the following:

(1) Uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances that comply with this Part.

APPLICANT – A communications service provider that submits an application.

APPLICATION – A request submitted by an applicant to the Township:

 (1) for a permit to collocate small wireless facilities; or

(2) to approve the installation, modification or replacement of a utility pole with small wireless facilities attached.

CABLE FACILITY – Buildings, other structures and equipment used by the owner or operator of a cable television system to provide service. As used in this definition, the term “cable system” shall have the meaning given to it in section 602(6) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. §522(7)).

COLLOCATION or COLLOCATE – To install, mount, maintain, modify or replace small wireless facilities on an existing utility pole or other wireless support structure.

COMMUNICATIONS FACILITY – A set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide a communications service.

COMMUNICATIONS SERVICE PROVIDER – Any of the following:

(1) A cable operator as defined in section 602(4) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. §522(5)).

(2) A provider of information service as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. §153(24))

(3) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. §153(51)).

 (4) A wireless provider.

DECORATIVE POLE – A municipal pole that is specially designed and placed for aesthetic purposes.

FCC – The Federal Communications Commission.

HISTORIC BUILDING OR DISTRICT – A building that is or a group of buildings, properties or sites that are:

(1) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register.

(2) Determined to be eligible for listing by the Keeper of the National Register of Historic Places who has been delegated the authority by a Federal agency to list properties and determine their eligibility for the National Register of Historic Places in accordance with section VI.D.1.a.i-v of the Nationwide Programmatic Agreement for Review Regarding the Section 106 National Historic Preservation Act Review Process as specified under 47 CFR Pt. 1, App. C (relating to Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.)

(3) Marked as a historical site by the Pennsylvania Historical and Museum Commission pursuant to 37 Pa.C.S. (relating to historical and museums).

(4) Within a historic district created pursuant to the act of June 13, 1961 (P.L.282, No.167), entitled “An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts.”

MICRO WIRELESS FACILITY – A small wireless facility that:

 (1) does not exceed two cubic feet in volume; and

 (2) has an exterior antenna no longer than 11 inches.

MODIFICATION or MODIFY – The improvement, upgrade or replacement of a small wireless facility or an existing utility pole that does not substantially change, as defined in 47 CFR §1.6100(b)(7)(relating to wireless facility modifications), the physical dimension of the small wireless facility or utility pole.

MUNICIPALITY – Any of the following:

 (1) A city of the first, second, second class A or third class.

 (2) A borough.

 (3) An incorporated town.

 (4) A township of the first or second class.

 (5) A county.

 (6) A home rule municipality.

(7) A similar general purpose unit of government established by the General Assembly.

MUNICIPAL POLE – A utility pole owned, managed or operated by or on behalf of a municipality.

RIGHT-OF-WAY – The area on, below or above a public roadway, highway, street, sidewalk, alley, utility easement or similar property. The term does not include a Federal interstate highway.

SMALL WIRELESS FACILITY – The equipment and network components, including antennas, transmitters and receivers, used by a wireless provider that meet the following qualifications:

(1) Each antenna associated with the deployment is no more than three cubic feet in volume.

(2) The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. Any equipment used solely for the concealment of the small wireless facility shall not be included in the calculation of equipment volume under this paragraph.

TECHNICALLY FEASIBLE – By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a material reduction in the functionality of the small wireless facility.

TOWNSHIP – White Deer Township, Union County, Pennsylvania.

UTILITY FACILITY – Buildings, other structures and equipment owned or operated by a public utility, as defined in 66 Pa.C.S. §102 (relating to definitions), to provide service.

UTILITY POLE – A pole or similar 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 or for collocation. The term includes the vertical support structure for traffic lights but does not include wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.

WIRELESS FACILITY – As follows:

(1) Equipment at a fixed location that enables wireless service between user equipment and a communications network, including any of the following:

 (a) Equipment associated with wireless services.

(b) Radio transceivers, antennas, coaxial or fiber optic cables, regular and backup power supplies or comparable equipment, regardless of technological configuration.

 (2) The term includes a small wireless facility.

 (3) The term does not include any of the following:

(a) The structure or improvements on, under or within which the equipment is collocated.

(b) The coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.

WIRELESS INFRASTRUCTURE PROVIDER – A person authorized by the Pennsylvania Public Utility Commission to provide telecommunications service in this Commonwealth that builds or installs wireless telecommunication transmission equipment, wireless facilities or wireless support structures but is not a wireless services provider.

WIRELESS PROVIDER – A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES – Services, whether at a fixed location or mobile, using a licensed or unlicensed spectrum, provided to the public using wireless facilities.

WIRELESS SERVICES PROVIDER – A person who provides wireless services.

WIRELESS SUPPORT STRUCTURE – The term shall have the same meaning given to it in the act of October 24, 2012 (P.L.1501, No.191), known as the Wireless Broadband Collocation Act.

**§202. Permitting Process for Small Wireless Facilities and Utility Poles within Right-of-Way.**

(1) Applicability. The provisions of this section shall apply to the Township’s permitting of small wireless facilities by a wireless provider or the installation, modification and replacement of utility poles with small wireless facilities attached by a wireless provider within the right-of-way.

(2) Review. An application under this section shall be treated as a permitted use in all areas of the Township, except underground districts in accordance with Chapter 27, Part 4, Section 448(1)(f) of the Code of Ordinances of White Deer Township, and reviewed by the Township Zoning Officer for conformance with applicable codes. Such applications shall not be subject to discretionary zoning review, including conditional use or special exception requirements.

(3) Permits.

(a) The Township may require an applicant to obtain one or more permits from the Township Zoning Officer, including a Zoning Permit, to perform the following within the right-of-way:

(1) Collocate, maintain and modify small wireless facilities.

 (2) Replace existing utility poles for collocation.

(3) Install new utility poles with attached small wireless facilities.

(b) Permits of general applicability shall not apply exclusively to small wireless facilities. The Township shall receive applications for collocation or for installation, modification or replacement of utility poles with small wireless facilities attached and process and issue permits, subject to the requirements of applicable codes. The following apply:

(1) The Township may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the Township, including reserving fiber, conduit or pole space for the Township.

(2) An applicant shall not be required to provide justification for capacity or radio frequency. An applicant may be required to:

(a) Include documentation with an application that includes construction and engineering drawings, demonstrates compliance with the criteria specified under Chapter 27, Part 4, Section 448(1)(f) of the Code of Ordinances of White Deer Township and includes all necessary approvals from the pole owner.

(b) Self-certify that the filing and approval of the application is required by the wireless provider to provide additional capacity or coverage for wireless services. Nothing in this subsection shall be construed to permit the Township to require an applicant to submit information about an applicant’s business decisions with respect to its service, customer demand for service or quality of service.

(c) Include documentation showing compliance with design guidelines consistent with Chapter 27, Part 4, Section 448(1)(h).

(4) Completed Application. Within 10 business days of receiving an application, the Township must determine and notify the applicant in writing whether the application is incomplete. If an application is incomplete, the notice must specifically identify the missing information. The processing deadline shall restart at zero on the date the applicant provides the missing information. The processing deadline may be tolled by agreement of the applicant and the Township.

(5) Deadlines. An application shall be processed on a nondiscriminatory basis and deemed approved if the Township fails to approve or deny the application within 60 days of receipt of a complete application to collocate and within 90 days of receipt of a complete application to replace an existing utility pole or install a new utility pole with small wireless facilities attached.

(6) Denial.

(a) The Township may deny an application under this section only if any of the following apply:

(1) The small wireless facility materially interferes with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.

(2) The small wireless facility fails to comply with applicable codes.

(3) The small wireless facility fails to comply with the requirements specified under this Part and Chapter 27, Part 4, Section 448 of the Code of Ordinances of White Deer Township.

(4) The applicant fails to submit a report by a qualified engineering expert which shows that the small wireless facility will comply with applicable FCC regulations.

(b) Within the time frame established under subsection (5), the Township shall document the basis for a denial, including the specific provisions of applicable codes on which the denial was based, and send the documentation to the applicant within five business days of the denial.

(c) The applicant may cure the deficiencies identified by the Township and resubmit the application within 30 days of receiving the written basis for the denial without being required to pay an additional application fee. The Township shall approve or deny the revised application within 30 days of the application being resubmitted for review or the resubmitted application shall be deemed approved 30 days after resubmission. Any subsequent review shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other sections of the application that were not previously denied, the Township shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

(7) Consolidated Application. An applicant seeking to collocate within the jurisdiction of a single municipality shall be allowed at the applicant’s discretion to file a consolidated application for collocation of multiple small wireless facilities as follows:

(a) The consolidated application does not exceed 20 small wireless facilities.

(b) The denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same consolidated application.

(c) A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period. If the Township receives more than one consolidated application or 20 single applications within a 45-day period, the processing deadline shall be extended 15 days in addition to the processing deadline specified under subsection (4) to allow the municipality to complete its initial review under subsection (4).

 (d) The following apply:

(1) For the purpose of counting the number of small wireless facilities each applicant has before the Township at a given time, small wireless facilities and poles that a wireless provider applicant has requested a third party to deploy and that are included in a pending application by the third party shall be counted as pending requests by the wireless provider applicant.

(2) An application tolled under (7)(c) above shall count towards the total number of applications included in a consolidated application unless the application is withdrawn by the applicant. As the processing of applications is completed, the municipality shall begin processing previously tolled application in the order in which the tolled applications were submitted, unless the applicant specifies a different order.

(8) Time Limit for Work. The proposed collocation, the modification or replacement of a utility pole or the installation of a new utility pole with small wireless facilities attached for which a permit is granted under this section shall be completed within one year of the permit issuance date unless the Township and the applicant agree in writing to extend the period.

(9) Utility Poles. When applying to install a new utility pole under this Part, the Township may require the wireless provider to demonstrate that it cannot meet the service reliability and functional objectives of the application by collocating on an existing utility pole or municipal pole instead of installing a new utility pole. The Township may require the wireless provider to self-certify that the wireless provider has made this determination in good faith and to provide a documented summary of the basis for the determination. The wireless provider’s determination shall be based on whether the wireless provider can meet the service objectives of the application by collocating on an existing utility pole or municipal pole on which:

 (a) The wireless provider has the right to collocation.

(b) The collocation is technically feasible and would not impose substantial additional cost.

(c) The collocation would not obstruct or hinder travel or have a negative impact on public safety.

(10) Approval. Approval of an application authorizes the applicant to:

(a) Collocate on an existing utility pole, modify or replace a utility pole or install a new utility pole with small wireless facilities attached as identified in the initial application.

(b) Subject to the permit requirements and the applicant’s right to terminate at any time, operate and maintain small wireless facilities and any associated equipment on a utility pole covered by the permit for a period of not less than five years, which shall be renewed for two additional five-year periods if the applicant is in compliance with the criteria set forth in this Part or applicable codes consistent with this Part and the applicant has obtained all necessary consent from the utility pole owner.

(11) Removal of Equipment.

(a) Within 60 days of suspension or revocation of a permit due to noncompliance with this Part or applicable codes consistent with this Part, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant’s wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.

(b) Within 90 days of the end of a permit term or an extension of the permit term, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant’s wireless facilities and associated equipment are the only facilities on the utility pole.

(12) Moratorium Prohibited. The Township may not institute, either expressly or de facto, a moratorium on:

(a) filing, receiving or processing applications; or

(b) issuing permits for:

 (1) collocation;

 (2) modification or replacement of utility poles to support small wireless facilities; or

(3) installation of new utility poles to support small wireless facilities.

(13) When Applications Not Required.

(a) The Township shall not require an application for:

 (1) Routine maintenance or repair work.

 (2) The replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller and still qualify as a small wireless facility.

(3) The installation, placement, maintenance, operation or replacement of micro wireless facilities that are strung on cables between existing utility poles by or for a communications service provider authorized to occupy the right-of-way, in compliance with the National Electrical Safety Code.

(b) The Township may require a permit to perform work within the right-of-way for the activities under section (13)(a)(1) above or subsection (3) of this section, if applicable for work that involves excavation, closure of a sidewalk or closure of a vehicular lane. Permits shall be subject to the requirements provided in this Part or applicable codes consistent with this Part.

(14) Application Fees. Subject to the fee adjustment requirements under Chapter 27, Part 4, Section 448(4)(c), the Township shall have the right to charge an application fee for the review of a permit application and plans submitted for the work to be done within the right-of-way. The Township may charge a one-time application fee of up to the following:

(a) Five Hundred and 00/100 ($500.00) Dollars for an application seeking approval for no more than five collocated small wireless facilities and up to One Hundred and 00/100 ($100.00) Dollars for each collocated small wireless facility beyond five.

(b) One Thousand and 00/100 ($1,000.00) Dollars for an application seeking approval of a small wireless facility that requires the installation of a new or replacement utility pole.

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