

BOROUGH OF SEWICKLEY HILLS
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2 of 2018

AN ORDINANCE OF THE BOROUGH OF SEWICKLEY HILLS, ALLEGHENY COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE OF THE BOROUGH OF SEWICKLEY HILLS, PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF COMMUNICATIONS TOWERS COMMUNICATIONS ANTENNAE; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Borough recognized the importance of wireless communications facilities in providing high quality communications service to its residents and businesses, the Borough also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities; and

BE IT ORDAINED AND ENACTED by the Council of the Borough of Sewickley Hills, Allegheny County, Pennsylvania and it is ordained and enacted by the authority of the same:

SECTION 1. Article II Definitions and Terms Section 2.1 Definitions and terms as amended is hereby further amended to add/change/delete the following:

- a. Add the Definition of: 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 communications towers, as defined below.
- b. Delete the definition of Co-Locations/Shared Use Facility and replace with: Co-location/Shared Use Facility – the mounting of one or more communications facilities, including antennae, on an existing communications towers, or on any structure that already supports at least one communications antenna.
- c. Add the definition of: Communications Antenna – all communications antennae, including but not limited to, antennae and related equipment. Communications antennae shall not include support structures for antennae or any related equipment that is mounted to the ground or at ground-level.
- d. Delete the definition of Communications Facilities and add new definition: Communications Facility – 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.

- e. Delete the definition of Communications Tower and add new definitions for: Communications Tower – any structure that is used for the purpose of supporting one or more Antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles. Distributed antenna system hum facilities are considered to be communications towers. This excludes private home use satellite dishes and television antennae, or amateur radio operations licensed by the Federal Communications Commission (FCC.).
- f. Add the definition of: Distributed Antenna Systems (DAS) – network of spatially separated antenna sites connection to a common source that provided wireless service within a geographic area or structure; and,
- g. Add the definition of: Emergency – a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.
- h. Delete the definition of Essential Services and add new definition for: Essential Services - the erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, excluding communications antennae, communications towers, communications facilities, and telecommunications equipment building, as defined herein.
- i. Add the definition of: Height of a Communications Tower – the vertical distance measured from the ground level, including any base pad, to the highest point on a communications tower, including antennae mounted on the tower and any other appurtenances.
- j. Add the definition of: Monopole – a communications facility or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connection appurtenances.
- k. Add the definition of: Related Equipment – any piece of equipment related to, incidental to, or necessary for, the operation of a communications tower or communications antenna. By way of illustration, not limitation, related equipment includes generators and base stations.

- l. Add the definition of: Stealth Technology – camouflaging methods applied to wireless communications towers, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
- m. Add the definition of: Communications Substantially Change or Substantial Change – A modification to an existing wireless communications facility substantially changes the physical dimensions of a tower or base station if it meets any of the following criteria: (1) for communications towers outside the public rights-of-way, it increases the height of the facility by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater; for communications towers in the rights-of-way, it increases the height of the facility by more than 10% or 10 feet, whichever is greater; (2) for communications tower by more than 20 feet, or more than the width of the tower structures are the level off the appurtenance, whichever is greater for those communications towers in the public rights-of-way, it protrudes from the edge of the structure by more than 6 feet; (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets; (4) it entails any excavation of deployment outside the current site of the communications tower; or (5) it does not comply with conditions associated with prior approval of construction or modification of the communications tower unless the non-compliance is due to an increase in height, increase in width or addition of cabinets.
- n. Delete the definition of Telecommunications Equipment Building and add new definition of: Telecommunications Equipment Building – the building in which electronic receiving and relay equipment and monitoring devices for a communications facility are housed.
- o. Add the definition of: WBCA – Pennsylvania Wireless Broadband Collection Act (53 P.S. §11702.1 *et seq.*)
- p. Add the definition of: Wireless – transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, microwave, satellite, or radio signals.
- q. Add the definition of : Wireless Support Structure – a freestanding structure, such as a communications tower or any other supporting structure that was constructed to primarily support the placement or installation of a wireless communications facility if approved by the Borough.

SECTION 2. Article IX, Section 9.8 of the Sewickley Hills Borough Zoning Ordinance is hereby amended by deleting Section 9.8 and adding a new Section 9.8 as follows

Provisions Applicable to Communications Towers

- a. Section 9.8.8 is deleted and replaced with:

Section 9.9.8 Any proposed communications tower shall be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennae, as well as comparable antennae for future users.

- b. Section 9.8.14 is deleted and replaced with:

Section 9.8.14 In the event that use of a communications tower 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 communications towers or portions of communication towers shall be removed as follows:

Section 9.8.14.1 All abandoned or unused communications towers and accessory facilities related equipment shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the Borough.

Section 9.8.14.2 If the communications tower and/or related equipment is not removed within two (2) months of the cessation of operations at site, or within any longer period approved by the Borough, the communications tower and related equipment may be removed by the Borough and the cost of removal assessed against the owner of the communications facility.

- c. Section 9.8.15 is deleted and replaced with:

Section 9.8.15 Power mount facilities (antennae mounted on electrical transmission towers) shall be permitted as a conditional use in this district where permitted by the utility or property owner. Such facilities shall not include antennae that fall under the Pennsylvania Wireless Broadband Collection Act.

- d. Article IX Section 9.8 shall be amended by deleting the current 9.18.19 and enacting a new 9.8.19 as follows and by adding the following in additional subsections.

1. Section 9.8.19 Prior to the Borough's issuance of a permit authorizing construction and erection of a communications tower, a structural engineer registered in Pennsylvania and employed by the applicant, shall issue to the Borough a written certification of the proposed communication tower's ability to meet the structural

standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided during the conditional hearings, or at a minimum, be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits.

2. Section 9.8.20 An application for a communications tower must demonstrate that a significant gap in wireless coverage or capacity exists in the applicable area and that the type of communications facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the Borough's decision on an application for approval of communications tower.
3. Section 9.8.21 Within thirty (30) calendar days of the date that an application for a communications tower 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 communications towers shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such communications tower 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 be counted toward the one hundred fifty (150) day review period.
4. Section 9.8.22 Prior to receipt of a zoning permit for the construction or placement of a communications tower, the applicant shall provide to the Borough financial security sufficient to guarantee the removal of the communications tower. Said financial security shall be in the form of a bond and shall remain in place until the communications tower is removed.
5. Section 9.8.23 An application for a new communications tower shall demonstrate that the proposed communications tower cannot be accommodated on an existing or approved structure or building, sited on land owned and maintained by Sewickley Hills Borough or sited on commercial property. Borough Council may deny an application to construct a new Communications Tower if the Applicant has not made a good faith effort to mount the commercial communications antenna(s) on an existing structure. The Applicant shall demonstrate that it contacted the owners of tall structures,

buildings, and towers within one quarter (1/4) of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- 9.8.23.1 The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
- 9.8.23.2 The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
- 9.8.23.3 Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
- 9.8.23.4 A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- 9.8.23.5 New Communications towers that cannot be accommodated on an existing or approved structure or building shall be sited using the following prioritized order:
 - a. Properly located in the Commercial-Industrial (CI) district
 - b. Land owned and maintained by Sewickley Hills Borough
 - c. Property located in the Neighborhood Commercial (NC) district
 - d. Public ROWsAn applicant for a new communications tower shall demonstrate that the proposed communications tower cannot be accommodated on any/all higher prior sites.

SECTION 3. Article IX of the Sewickley Hills Borough Zoning Ordinance shall be amended by adding Section 9.8.24 Provisions Applicable to Communications Towers Located in the Public Rights-of-Way (ROW) as follows:

- 9.8.24.1 In addition to the requirements specific to communications towers in the public rights-of-way, the following aforementioned provisions shall apply to communications towers that fall under this section: Section 9.8.8, Section 9.8.17; Section 9.8.20; Section 9.8.21; and Section 9.8.23.
- 9.8.24.2 Communications towers in the ROW are subject to conditional use proceedings. In the submission of documentation to the Borough and during conditional use hearings, the applicant shall demonstrate that the proposed communication tower complies with all applicable standards and requirements enumerated in the Borough Zoning Ordinance.
- 9.8.24.3 Applicants for communications towers in the ROW shall demonstrate that the proposed tower cannot be located on existing infrastructure in the ROW, such as light poles or utility poles.
- 9.8.24.4 Communications towers greater than thirty-five (35) feet in height are prohibited in the public ROW. Communications towers are prohibited in areas in which all utilities are located underground.
- 9.8.24.5 Communications towers shall not be located in the front facade area of any structure.
- 9.8.24.6 Communications towers shall be permitted along certain collector roads and arterial roads throughout the Borough, regardless of the underlying zoning district. A list of such permitted roads are I-79, Glenfield Road, Blackburn Road, Mt. Nebo Road, Fern Hollow Road, Audubon Road and Red Mud Hollow Road.
- 9.8.24.7 The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all communications towers 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.
- 9.8.24.8 Communications towers and related 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:
 - 9.8.24.8 a In no case shall ground-mounted related equipment, walls, or landscaping be located within 18 inches of the face of the curb.

- 9.8.24.8 b Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
- 9.8.24.8 c Any graffiti on the tower or on any Related Equipment shall be removed at the sole expense of the owner.
- 9.8.24.8 d Any underground vaults related to Communications towers shall be reviewed and approved by the Borough.
- 9.8.24.9 Design regulations
 - 9.8.24.9 a The communications tower 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 applicant shall be subject to the approval of the Borough.
 - 9.8.24.9 b Communications towers in the public ROW shall not exceed thirty-five (35) feet in height.
 - 9.8.24.9 c To the extent permissible under state and federal law, any height extensions to an existing communications tower shall require prior approval of the Borough, and shall not increase the overall height of the communications tower to more than thirty-five (35) feet.
 - 9.8.24.9 d Any proposed communications tower shall be designed structurally, electrically, and in all respects to accommodate both the applicant's antennae and comparable antennae for future users.
- 9.8.24.10 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 communications tower in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any communications tower when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances.
 - 9.8.24.10 a The construction, repair, maintenance or installation of any Borough or other public improvement in the Right-of-Way.

- 9.8.24.10 b The operations of the Borough or other governmental entity in the right-of-way.
- 9.8.24.10 c Vacation of a street or road or the release of a utility easement; or
- 9.8.24.10 d A communications emergency as determined by the Borough.

SECTION 4. Article IX of the Sewickley Hills Borough Zoning Ordinance shall be amended by adding Section 9.8.25 Provisions Applicable to Communications Antennae as follows:

- 9.8.25.1 The following regulations apply to all communications antennae:
 - 9.8.25.1.1 Communications antennae are permitted by conditional use subject to regulations, except for antennae that fall under the Pennsylvania Wireless Broadband Collocation Act. Communications antennae shall be located or co-located on utility poles and traffic lights. If such placement is not possible, communications antennae are permitted by conditional use in all zones subject to the restrictions and conditions prescribed below and subject to applicable permitting by the Borough.
 - 9.8.25.1.2 The placement of communications antennae on the following structures is prohibited: single family dwellings; accessory structures to single family dwellings.
 - 9.8.25.1.3 Communications antennae shall be permitted to co-locate upon non-conforming communication towers and other non-conforming structures. Co-location of antennae upon existing communications towers is encouraged even if the communications tower is non-conforming as to use within a zoning district.
 - 9.8.25.1.4 In the event that use of a communications antenna 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 communications antennae, or portions or antennae, shall be removed as follows:
 - a) All abandoned or unused communications antennae and related equipment shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - b) If the communications antenna or related equipment is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the Borough, the communications antenna and/or related

equipment may be removed by the Borough and the cost of removal assessed against the owner of the communications antenna.

9.8.25.1.5 Each person that owns or operates a communications antenna 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 communications antenna. Each person that owns or operates a communications antenna 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 communications antenna. The obligation to indemnify, hold harmless and defend shall include, but not limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

9.8.25.2 In addition to the regulations listed in Section 9.8.25, the following regulations shall apply to all communications antennae that do not fall under the Pennsylvania Wireless Broadband Collection Act:

9.8.25.2.1 Communications antennae shall be co-located on existing wireless support structures, such as existing buildings or communications towers.

9.8.25.2.2 The total height of any wireless support structure and mounted communications antenna shall not exceed twenty (20) feet above the maximum height permitted in the underlying zoning district, unless the applicant applies for, and subsequently obtains, a variance.

9.8.25.2.3 In accordance with industry standard, the applicant must submit documentation to the Borough justifying the total height of the communications antenna. Such documentation shall be analyzed in the context of such justification on an individual basis.

9.8.25.2.4 If the applicant proposes to locate related equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district, and landscaping shall be required to screen as much of the equipment building as possible. An evergreen screen shall

surround the site and shall comply with the landscaping applicable to telecommunications equipment buildings.

9.8.25.2.5 Any applicant proposing the construction of a new communications antenna, or the modification of an existing communications antenna, shall first obtain a conditional use from the Borough. New constructions, modifications, and replacements that do fall under the WBCA shall not be subject to the conditional use process. The conditional use application shall demonstrate that the proposed facility complies with all applicable provisions in the Sewickley Hills Borough Zoning Ordinance.

9.8.25.3 In addition to the regulations listed in Section 9.8.25, the following regulations shall apply to all communications antennae that fall under the Pennsylvania Wireless Broadband Collocation Act:

9.8.25.3.1 Applicants proposing the modification of an existing communications tower shall obtain a building permit from the Borough. In order to be considered for such permit, the applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.

9.8.25.3.2 Within thirty (30) calendar days of the date that an application for a communications antenna 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 sixty (60) calendar days of receipt of a complete application, the Borough shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision.

9.8.25.3.3 Ground-mounted related equipment greater than three (3) cubic feet shall not be located within fifty (50) feet of a lot in residential use or zoning residential.

9.8.25.3.4 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 communications antenna or \$1,000, whichever is less.

SECTION 5. Article IX of the Sewickley Hills Borough Zoning Ordinance shall be amended by adding Section 9.8.25.10 Provisions Applicable to Communications Antennae located in the Public Rights-of-Way as follows:

- 9.8.25.10.1 The regulations relating to all communications antennae, enumerated in Article IX, Section 9.8.25 of the Zoning Ordinance, shall also be applied to communications antennae in the public ROW.
- 9.8.25.2 Communications antennae in the ROW shall be located or co-located on existing poles, such as existing utility poles or light poles. If such location or co-location is not technologically feasible, the applicant shall locate its communications antenna on existing poles or freestanding structures that do not already act as wireless support structures with the Borough's approval.
- 9.8.25.10.3 Design Requirements:
- 9.8.25.3.1 Communications antennae 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.
- 9.8.25.3.2 Antennae and related equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- 9.8.25.10.4 The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all communications antennae 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.
- 9.8.25.10.5 Communications antennae and related 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:
- 9.8.25.10.5.1 In no case shall ground-mounted related equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb or within an easement extending onto a privately-owned lot;
- 9.8.25.10.5.2 Ground-mounted related equipment that cannot be placed underground shall be screened, to the fullest extent possible,

through the use of landscaping or other decorative features to the satisfaction of the Borough.

9.8.25.10.5.3 Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.

9.8.25.10.5.4 Any graffiti on any wireless support structures or any related equipment shall be removed at the sole expense of the owner.

9.8.25.10.5.5 Any proposed underground vault related to a communications antenna shall be reviewed and approved by the Borough.

9.8.25.10.6 Within two (2) months 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 communications antenna in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any communications antenna 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:

9.8.25.10.6.1 The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;

9.8.25.10.6.2 The operations of the Borough or other governmental entity in the Right of-Way;

9.8.25.10.6.3 Vacation of a street or road or the release of a utility easement; or

9.8.25.10.6.4 A communications emergency as determined by the Borough.

SECTION 6. Miscellaneous

- A. Police powers. The Borough, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable federal, state and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent

jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

- C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Borough Council of Sewickley Hills Borough.

ENACTED AND ORDAINED this 12 day of JUNE, ~~2017~~ 2018

ATTEST:

SEWICKLEY HILLS BOROUGH
COUNCIL:

Ariana Steele

Secretary

Cynthia A. Phillips

President

Approved and Accepted this 12 day of JUNE, 2018.

[Signature]

Mayor