

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. 53 - 2020

JULY 15, 2020

AN ORDINANCE

Amending Part Nine, Streets, Utilities, and Public Services Code, Title One, Street and Sidewalk Areas, of the Codified Ordinances of Allentown, Pennsylvania, by adding a new Article entitled "Small Cell Antenna".

WHEREAS, the City of Allentown ("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small cell antenna and associated poles, while enabling the City to manage the rights-of-way of the City of Allentown in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small cell antenna and associated poles are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to homes, businesses, and schools within the City; and

WHEREAS, the City recognizes that small cell antenna and associated poles often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, the City intends to fully comply with State and Federal law to the extent it preempts local municipal control.

WHEREAS, (C) The City has the authority to enact this ordinance pursuant to its police powers; the Pennsylvania Constitution, Art. IX, Sec. 2; The Home Rule and Optional Plan Government Law, 53 Pa.C.S. § 2961; and the City of Allentown Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED, Article 914 shall be established and amended as follows:

914 SMALL CELL ANTENNA

Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of Small Cell Antennas and associated poles in rights-of-way within the City's jurisdiction, in compliance with state and federal law to the extent it preempts local municipal control, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

Provide for the managed development of small cell antennas and associated poles in a manner that enhances the benefits of wireless communication and accommodates the needs of both City residents and wireless carriers in accordance with federal and state laws and regulations;

Establish procedures for the design, siting, construction, installation, maintenance and removal of small cell antennas and associated poles inside the public rights-of-way;

Encourage the collocation of small cell antennas on existing structures rather than the construction of new pole-based structures;

Ensure that small cell antennas and associated poles will be removed in the event that such structures are abandoned or become obsolete and are no longer necessary;

Limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;

Limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

Limit environmental damage, including damage to trees;

Respect the character of the neighborhoods and other areas in which facilities are installed; and

facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

914.01 DEFINITIONS

1. **Antenna** shall mean 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 private residence-mounted satellite dishes or television antennae or amateur radio equipment including, without limitation, ham or citizen band radio antennae.
2. **Collocation** shall mean the mounting or installing of one or more SCAs on an existing structure; and/or modifying a structure for the purpose of mounting or installing a SCA on that structure.
3. **FCC** shall mean Federal Communications Commission.
4. **Pole** shall mean a self-supporting lattice pole, guy pole, monopole, or any other pole, that may be utilized to support an antenna for receiving and/or transmitting a wireless signal
5. **Right-of-Way** shall mean the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the City.
6. **Small Cell Antenna (SCA)** shall mean the Antennae, nodes, control boxes, poles, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services. An SCA shall also be a facility that meets each of the following conditions:
 - a. The structure on which antenna facilities are mounted;
 - i. Are 39 feet or less in height, or up to 50 feet in height as may be allowed by the Public Works Department as outlined in the “Small Cell Standards” appeal process; or
 - ii. Are no more than 10 percent taller than other adjacent structures; or

- iii. Do not extend existing structures on which they are located to a height of more than 39 feet or by more than 10 percent, whichever is greater.
 - b. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
 - c. All antenna equipment associated with the facility (excluding antennas) is cumulatively no more than 28 cubic feet in volume; and
 - d. The facility does not require antenna structure registration under 47 CFR Part 17; and
 - e. 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)
7. **Small Cell Antenna Applicant (SCA Applicant)** shall mean any person that applies for a SCA permit.
8. **Stealth Technology** shall mean camouflaging methods applied to SCAs and other related 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.
9. **Structure** means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).
10. **Wireless** shall mean transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

914.02 PERMIT FOR INSTALLATION OF A SMALL CELL ANTENNA

1. No person shall place a SCA, or associated pole, in the right-of-way without first filing an application and obtaining a permit to do so, except as otherwise provided in this Chapter.
2. All applications for permit shall be in such form and shall provide such information as may be lawfully required by the Director of the City of Allentown's Department of Public Works and is consistent with the FCC Small Cell Order. The City of Allentown Department of Public Works may develop new or additional permit application forms, checklists, updated aesthetic and safety standards, and other related materials as required to optimally meet the goals of Allentown, its citizens, and its leadership.
3. In considering an application for permit, the Director shall take into account any objections made to the whole or any part of such application. The Director may attach to any permit granted hereunder any conditions or modifications deemed necessary.
4. **Collocation.** An application for a SCA requiring a newly constructed pole in the right-of-way shall not be approved unless the Applicant provides evidence that SCA cannot be accommodated on an existing pole within 260 feet of the proposed location because use of the existing pole (i) imposes technical limits, or (ii) would involve additional material costs.

5. RF Certification. An application for a SCA shall include design and operation certification by a PA PE licensed RF engineer that the proposed SCA(s) comply with FCC regulations governing RF emissions and safety-related signage.
6. Time limit for work. The proposed collocation, the modification or replacement of a pole or the installation of a new pole with SCAs attached for which a permit is granted under this section shall be completed within one year of the permit issuance date unless the municipality and the applicant agree in writing to extend the period.

914.03 FEES

1. **Application Fee** - All applications for collocation on an existing pole shall be accompanied by a fee of \$500 for a single up-front application that includes up to five SCAs, with an additional \$100 fee for each SCA beyond five; All applications for new or replacement poles shall be accompanied by a fee of \$1,000 per new or replacement pole.
2. **Annual Maintenance Fee for Right-Of-Way Use** - Every SCA in the right-of-way is subject to the City's right, in accordance with State and Federal law, to fix annually a fair and reasonable compensation to be paid for use and occupancy of the right-of-way. Such compensation for right-of-way use shall be directly related to the City's actual right-of-way management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, documenting, permitting, supervising and other right-of-way management activities by the City. Owners of SCAs shall pay the following fees to compensate the City for the City's costs incurred in connection with the activities described above.
 - a. The owner of each SCA shall pay an \$195 annual fee; or
 - b. If a wireless provider owns more than one SCA collocated on the same pole, the owner shall pay a \$195 annual fee and a \$25 fee for each additional SCA owned by the wireless provider that is collocated on the same pole, not to exceed \$270 for all SCAs on a single pole.

914.04 WHEN PERMIT NOT REQUIRED

1. A permit shall not be required for:
 - a. routine maintenance;
 - b. the replacement of a SCA with another SCA that is substantially similar or smaller in size, weight, and dimensions.

914.05 DESIGN REQUIREMENTS

1. **Standard of Care.** All SCAs 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 Americans With Disabilities Act Guidelines (ADA), American National Standards Institute (ANSI) Code, National Electrical Safety Code (NESC), National Electrical Code (NEC), the Occupational Safety and Health Act (OSHA), Pennsylvania Public Utilities Commission (PUC) regulations and the Federal Communications Commission (FCC) Regulations, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors (NATE). Any SCA 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 City.

2. All SCAs must comply with the design requirements of the City of Allentown's current Small Cell Antenna General Design and Construction Standards, and compliance will be a basis of permit issuance.
3. The SCA shall employ the most current Stealth Technology commercially available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the SCA applicant shall be subject to the approval of the City
4. Subject to applicable law, any height extensions to an existing pole shall require prior approval of the City. The City reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the City which are stated in the design requirements published at the time of application.
5. Where technically feasible and subject to reasonable aesthetic and cost considerations, any proposed SCA shall be designed structurally, electrically, and in all respects to accommodate both the SCA applicant's Antennas and comparable Antennae for future users.
6. Operating Frequency and Transmission Power Range
 - a. Frequencies: All applications for a new small cell antenna installation shall use one of the licensed frequency bands for 5G. No use of shared bands will be allowed in order to minimize interference with City Traffic and Police band uses.
 - b. If the City experiences interference to any of its police cameras, traffic control systems, or any other City radio devices, immediately after the installation and initial operation of a SCA facility, the City may require the SCA owner of the newly installed SCA to adjust their operation and / or perform a radio study to prove the new facility is operating within FCC permitted SCA frequencies and power output ranges.

914.06 DAMAGE AND REPAIR

1. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider and return the right-of-way to its functional equivalence as it existed prior to any work being done in the right-of-way by the wireless provider.
2. If the wireless provider fails to make the required repairs within 30 days after written notice, the City may perform those repairs and/or remove the damaged article(s) and charge the wireless provider the reasonable, documented cost of the repairs.
3. The City may suspend the ability of an SCA applicant to receive a new permit from the City until the applicant has paid any and all outstanding repair costs to the City.

914.07 ADDITIONAL ANTENNAE

1. As a condition of approval for all new poles for SCAs in the right-of-way, the SCA applicant shall provide the City with a written commitment that it will allow the City and/or other service providers to collocate antennae on their poles where technically and commercially reasonable. Written approval is not required if the additional Antennae are contained within a previously approved shroud designed to include the additional Antennae. Providers shall notify the City when adding any additional antennae under previously approved shrouds.

914.08 RELOCATION OR REMOVAL OF FACILITIES

1. Notice. Within ninety days following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any SCA or pole for which it has a permit hereunder whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the right-of-way and all other occupiers of the same right-of-way are required to relocate their facilities in a similar manner.
2. Emergency Removal or Relocation of Facilities. The City retains the right to cut or move any SCA or pole located within the right-of-way, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide it an opportunity to move its SCA or pole prior to cutting or removing them, and in all circumstances shall promptly notify the wireless provider after cutting or removing a SCA or pole. The City may recover the actual cost of such removal from the wireless provider.
3. Abandonment of Facilities. The City may require a wireless provider to remove an abandoned SCA or pole permitted hereunder within ninety (90) days of abandonment. The City shall notify the wireless provider in writing if the City requires removal of the abandoned SCA or pole. Should the wireless provider fail to timely remove the abandoned SCA or pole, the City may remove the SCA or pole after reasonable written notice to the wireless provider of the City's intent to remove the SCA or pole, and may recover the actual cost of such removal from the wireless provider. A SCA or pole shall be deemed abandoned at the earlier of the date that the wireless provider indicates in any way that it is abandoning the SCA or pole, or the date that is ninety (90) days after the date that the SCA or pole ceases to be used, unless the wireless provider gives the City reasonable evidence that it is diligently working to place the SCA or pole back in service.

914.09 REVIEW OF SMALL CELL ANTENNA APPLICATIONS

1. Within ten (10) business days of receiving an initial application, the City will determine and notify the applicant in writing whether the application is materially complete. If an application is materially incomplete, the City will specifically identify the missing documents or information, and the specific rule or regulation creating the obligation to submit such documents or information. The application review periods set forth in section 914.9.3 shall restart at zero on the date which the applicant submits all the documents and information identified by the City to make the application complete.
2. If the applicant's supplemental submission(s) fails to make the application complete, and the City notifies the applicant within 10 business days of the supplemental submission, the application review period set forth in section 914.9.3 shall be tolled until the applicant provides the missing documents and information. The application review period resumes (the date calculation does not restart) to run on the date when the applicant submits all the documents and information identified by the City to render the application complete.
3. All applications shall be processed on a nondiscriminatory basis, and the City shall approve or deny an application for:
 - a. collocation of SCA on an existing pole within 60 days of submission of the application, or
 - b. within 90 days for applications to deploy a SCA using a replacement or new pole.

4. An applicant and the City may enter into a written agreement to toll the time periods set forth in Section 914.9.3.

914.10 BONDING AND INSURANCE

1. Every owner of an SCA or pole located in the public right-of-way shall at all times fully indemnify, protect and save harmless, the City of Allentown, from and against all claims, actions, suits, damages and charges, and against all loss and necessary expenditures arising out of the installation and operation of the SCA or pole, or from the neglect or failure to maintain its equipment in good order and condition.
2. Every owner of a SCA or pole shall procure and maintain insurance to protect themselves and the City of Allentown from any and all claims for damages to property and/or personal injury, including death, which may arise from their operations and the maintenance of the SCA or pole. Certificates of Insurance shall name the City of Allentown as Additionally insured and shall be filed with the Department of Public Works at the time of the permit application and kept in force at all times. The limits of insurance shall be subject to the approval of the City's Risk Manager. Notwithstanding the foregoing, a wireless provider may self-insure the required insurance under the same terms and conditions as outlined above.

914.11 CONFLICTS WITH OTHER CHAPTERS

1. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

914.12 CONFLICTS WITH STATE AND FEDERAL LAWS

1. In the event that applicable federal or state laws or regulations conflict with the requirements of this Chapter, the wireless provider shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or state laws or regulations.

914.13 AUTHORITY GRANTED; NO PROPERTY RIGHT OR OTHER INTEREST CREATED

1. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the right-of-way.

914.14 MISCELLANEOUS

1. Police Powers. The City, 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 City under applicable federal, state and local laws and regulations.
2. Time, Place and Manner. The City shall determine the time, place and manner of construction, maintenance, repair and/or removal of all SCAs in the right-of-way based on public safety, traffic management, physical burden on the right-of-way, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the City and the requirements of the Public Utility Code.
3. 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.
4. Effective Date. This Ordinance shall become effective 10 days after adoption.

914.99 PENALTY

1. Any person violating the provisions of this article will, upon conviction thereof, be fined not more than Six Hundred (\$600.00) for each and every offense, together with costs, and in the default of payment thereof, be imprisoned for not more than thirty (30) days. Each failure to obtain a permit, or having obtained a permit, to comply with any of the requirements of this article, and each day during which such violation continues, will constitute a separate offense.
2. The Department of Public Works reserves the right to deny the issuance of future permits to any person or company who violates the provisions of this article.

LEGISLATIVE TEMPLATE

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

Public Works / Engineering

- **Summary and Facts of the Bill**

Amending Article 914 ; Part Nine, Streets, Utilities, and Public Services Code, Title One, Street and Sidewalk Areas, of the Codified Ordinances of Allentown, Pennsylvania, by adding a new Article entitled "Small Cell Antenna".

- **Purpose – Please include the following in your explanation:**
 - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
 - **What are the Benefits of doing this/Down-side of doing this**
 - **How does this Bill related to the City's Vision/Mission/Priorities**

The City of Allentown desires to encourage wireless infrastructure investment while enabling the City to manage the rights-of-way of the City of Allentown. The purpose of this ordinance is to establish policies and procedures for the placement of Small Cell Antennas and associated poles in rights- of-way within the City's jurisdiction.

- **Financial Impact – Please include the following in your explanation:**
 - **Cost (Initial and ongoing)**
 - **Benefits (initial and ongoing)**

Application Fees and Annual Maintenance Fees for Right-Of-Way Use as noted in the proposed ordinance; section 914.03 FEES

- **Funding Sources – Please include the following in your explanation:**
 - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

A General Fund revenue account will need to be created in order to properly account for the fees received.

- **Priority status/Deadlines, if any 10 days after Council approval.**

- **Why should Council unanimously support this bill?**

The City recognizes that small cell antenna and associated poles are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to homes, businesses, and schools within the City of Allentown.