

ORDINANCE NO. 2018-25

AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 1204.04 (C) (8) OF THE PLANNING AND ZONING CODE TO UPDATE REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES DUE TO THE PASSAGE OF HOUSE BILL 478.

WHEREAS, House Bill 478 gives municipalities the authority to regulate the appearance and placement of small-cell technology; and

WHEREAS, House Bill 478 also provides municipalities with additional time to review applications for new cell tower locations when a high number of applications are received at one time; and

WHEREAS, Planning Commission has recommended that Council amend and supplement the Planning and Zoning Code to comply with the regulations set forth in House Bill 478.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Section 1204.04 (C) (8) of the Planning and Zoning Code is hereby amended and supplemented to read as follows:

“(8) Wireless Telecommunication Facilities.

- a) *Applicability.* The provisions of this section shall apply to all wireless telecommunication facilities, unless such facilities are small cell facilities located in the City right-of-way or wireless support structures located in the City right-of-way, in such instance Chapter 1020 of the City’s Codified Ordinances, shall apply. Nothing herein supersedes the applicability of O.R. C. Section 4939 to small cell facilities and wireless support structures in City rights-of-way.
- b) *Severability.* Any conditional use permit issued for a wireless telecommunication facility shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.
- c) *Overall Policy and Desired Goals.* In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood, and other aspects of the quality of life specifically listed elsewhere in this section, the City hereby adopts an overall policy with respect to a conditional use permit for wireless telecommunications facilities with the exception of small cell facilities and/or wireless support structures in the City rights-of-way, for the express purpose of achieving the following goals:
 - i) To establish a policy for examining a conditional use permit application for and issuing a conditional use permit for wireless telecommunications facilities that is both fair and consistent;

- ii) To establish regulations that promote and encourage, to the maximum extent feasible, the sharing and/or co-location of wireless telecommunications facilities among service providers; and
 - iii) To establish regulations that promote and encourage, to the maximum extent feasible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- d) *Location of Wireless Telecommunication Facilities.*
- i) Applicants for wireless telecommunications facilities subject to this section shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, with paragraph (A) being the highest priority and paragraph (E) being the lowest priority.
 - A. On existing towers or other structures without increasing the height of the tower or structure;
 - B. On City-owned properties located in any zoning district;
 - C. On properties in areas zoned for heavy industrial use;
 - D. On properties in areas zoned for light industrial use; or
 - E. All other sites.
 - ii) Should an applicant by-pass sites of higher priority, the applicant shall provide documentation showing substantial evidence that the higher priority option is not a commercially viable or technically feasible option.
 - iii) Notwithstanding the above, the Code Enforcement Officer or, if applicable, the Planning Commission, may approve any site located within an area in the above list of priorities, provided that it finds that the proposed site is not injurious to the best interest of the health, safety and welfare of the City and its inhabitants and will not have an adverse effect on the nature and character of the community and neighborhood.
 - iv) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may deny an application for any of the following reasons:
 - A. Conflict with safety and safety-related codes and requirements;
 - B. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning district;
 - C. The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers; or
 - D. Conflicts with the provisions of this section.
- e) *Shared Use of Wireless Telecommunications Facilities and Other Structures.*
- i) The City prefers the location of wireless telecommunication antennas on existing towers without increasing the height, as opposed to the unneeded construction of a new tower, before issuing a conditional use permit for a new tower.

- ii) No transmittal equipment of any kind may be installed on any structure below 10 meters from the surface level without approval from the Code Enforcement Officer.
- iii) An applicant submitting an application for a co-location of an antenna on existing wireless telecommunication tower that is not located in the City right-of-way and that does not increase the height of such tower shall only be required to submit an application for a zoning permit.
- iv) Any new wireless telecommunications facilities that is not a co-location as described above, and is not located in the City right-of-way, must be reviewed and approved through the conditional use permit procedure as established in Section 1203.07: Conditional Use Permit, and subject to the standards and conditions of this section.

f) *Conditional Use Permit Application and Review Requirements.*

- i) There shall be a pre-application meeting for wireless telecommunications facilities subject to this section. The purpose of the pre-application meeting is to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- ii) Any and all representations made by the applicant to the City on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the City.
- iii) An applicant shall submit to the City the number of completed applications determined to be needed during the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities.
- iv) The Planning Commission is the officially designated agency or body to whom applications for wireless telecommunications facilities (excluding co-location on existing facilities and excluding small cell facilities and/or wireless support structures in the City rights-of-way) must be made. Planning Commission is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking conditional use permits for wireless telecommunications facilities.
- v) An application for a conditional use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the City, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- vi) Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the state.
- vii) The applicant shall include a statement in writing:
 - A. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the conditional use permit, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances,

and regulations, including any and all applicable city, state and federal laws, rules, and regulations; and

B. That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

C. The tower shall be structurally designed to accommodate at least five additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant demonstrates, in writing, that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon;

D. The foreseeable number of FCC licenses available for the area;

E. The kind of wireless telecommunications facilities site and structure proposed;

F. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites; or

G. Available space on existing and approved towers.

viii) No tower owner or manager shall be permitted to submit an application for a conditional use permit for a tower if the tower owner does not have a signed agreement committing a commercial service provider to occupy space on the tower.

ix) In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the application, along with any letters of rejection, stating the reason for rejection.

x) The applicant shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads.

xi) The applicant shall certify that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property, and installed with appropriate surge protectors.

xii) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.

xiii) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided in a timely manner.

g) *Exceptions from a Conditional Use Permit.*

i) A conditional use permit shall not be required for small cell facilities or wireless support structures in the City rights-of-way, which are subject to Chapter 1020 of the City's Codified Ordinances. Notwithstanding anything to the contrary in this section, a conditional use permit shall not be required for those non-commercial exceptions noted in the definition of wireless telecommunications facilities.

ii) All wireless telecommunications facilities subject to this section that are existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility must comply with this section.

h) *Public Hearing and Notification Requirements.*

i) In the case of a new telecommunications tower subject to this section, the applicant shall, prior to the public hearing on the application, hold a balloon test. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a 3-foot in diameter brightly colored balloon at the maximum height of the proposed new tower.

ii) The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant 7 to 14 days in advance of the first test date in a newspaper with a general circulation in the City and posted on a sign posted on the site and visible from the road (with a minimum sign area of 16 square feet). The applicant shall inform the City, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

iii) The applicant shall provide photographic evidence of the balloon test as part of the application prior to the hearing.

iv) Prior to the review and decision on any application for a conditional use permit for wireless telecommunications facilities, a public hearing before the Planning Commission shall be held by the City, notice of which shall be published in accordance with Section 1203.02(H): Public Notification for Public Hearings. So that the City may notify nearby landowners, the application shall contain the names and addresses of all landowners whose property is located within 1,500 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.

i) *Retention of Expert Assistance and Reimbursement by Applicant.* The city may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the application for a conditional use permit, including the construction and modification of the site, once permitted. Such costs shall be paid by the applicant, as needed, and shall not exceed \$2,500.00 unless written notice is provided to the applicant in advance with the cost of hiring the consultant or expert.

j) *Permit Holder Responsibilities.*

i) A person who holds a conditional use permit for wireless telecommunications facilities granted under this Chapter shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety and safety-related

codes adopted by the City, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include but are not limited to construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

ii) A holder of a conditional use permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

iii) The holder of a conditional use permit shall notify the City of any intended modification of a wireless telecommunication facility and shall apply to the City to modify, relocate or rebuild a wireless telecommunications facility.

iv) The owner of the proposed new tower subject to this section, and his or her successors in interest, shall negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers; and allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges.

v) Failure to abide by the conditions outlined above may be grounds for revocation of the conditional use permit for the tower.

k) *Minimum Standards.*

i) All utilities at the proposed site for a wireless telecommunications facility, subject to this section, shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate.

ii) The wireless telecommunications facility and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

iii) At a telecommunications site, an access road, turn-around space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

l) *Height.*

i) The applicant for a conditional use permit shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

- ii) The maximum permitted height of a new tower subject to this section shall be 140 feet unless varied due to siting constraints or other site factors (i.e. limiting the number of new towers) as conditionally approved by Planning Commission.
- m) *Appearance and Visibility.*
 - i) All wireless telecommunications facilities subject to this Chapter shall contain a demonstration that the facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.
 - ii) As part of a conditional use permit application for a new or expanded wireless telecommunication tower, the applicant shall furnish a visual impact assessment, which shall include:
 - A. Photographic evidence of balloon test (See Section 1204.04(C)(8)h): Public Hearing and Notification Requirements.) showing representations of before and after views from key viewpoints both inside and outside of the City, as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
 - B. A visual depiction of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as it relates to the need or appropriateness of screening.
 - iii) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
 - iv) Towers shall be galvanized and painted with a rust-preventive paint of a non-contrasting gray or similar color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this code.
 - v) Lights, beacons, or strobes of any kinds shall not be permitted on any tower, antenna, and equipment unless required by the Federal Aviation Administration.
- n) *Security.* All wireless telecommunications facilities and antennas subject to this Chapter shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - i) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - ii) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- o) *Signage.* Wireless telecommunications facilities shall contain a sign no smaller than two square feet and no larger than four square feet located near the base of the tower in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name of the owner and operator of the antenna, as well as emergency phone number. The

sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation.

p) *Lot Size, Setbacks and Screening Requirements.*

i) All proposed towers and any other proposed wireless telecommunications facility structures subject to this Chapter shall be set back from any property line a minimum of a distance equal to the height of the proposed tower or wireless telecommunications facility structure plus 10% of the height of the tower or structure.

ii) Towers and any other wireless telecommunications facility structure subject to this Chapter shall be set back a minimum of 30 feet from any other non-related buildings situated on the same site. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements set forth in the applicable zoning district for the property on which it is situated.

iii) All equipment related to the operation of a tower and any other wireless telecommunications facility structure subject to this Chapter located on the ground shall be fully screened with a minimum six-foot high composite material privacy fence with continuous evergreen hedge vegetation, with a minimum initial tree height of five feet. All screening shall be located behind the specified setback lines. The tower or wireless telecommunications facility structure owner/operator is responsible for installing and maintaining said screening. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

q) *Performance Security.* The applicant and the owner of record of any proposed wireless telecommunications facilities property site subject to this Chapter shall, at their cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00, and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this chapter and conditions of any conditional use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the conditional use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original conditional use permit.

r) *Indemnification.*

i) Any application for wireless telecommunication facilities that is proposed for city property pursuant to this section shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however,

any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

ii) Notwithstanding the requirements noted in division (i) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a conditional use permit for wireless telecommunications facilities.

s) *Removal.*

i) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of wireless telecommunications facilities:

A. Wireless telecommunications facilities with a permit with the exclusion of small cell facilities and/or wireless support structures in the City rights-of-way, have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days.

B. Permitted wireless telecommunications facilities subject to this Chapter fall into such a state of disrepair that it creates a health or safety hazard.

C. Wireless telecommunications facilities subject to this Chapter have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required conditional use permit, or any other necessary authorization.

ii) If the City makes such a determination as noted in division (i) of this section, then the City shall notify the holder of the conditional use permit for the wireless telecommunications facilities promptly that said wireless telecommunications facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

iii) The holder of the conditional use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the City. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the City.

iv) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the wireless telecommunications facilities at the sole expense of the owner or conditional use permit holder.

v) If the City mandates the removal of a wireless telecommunication facility and the owner of the facility does not claim and remove it from the site to a lawful location within 10 days, then the City may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

vi) Notwithstanding anything in this section to the contrary, the City may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the conditional use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the conditional use permit and the City. If such a plan is not developed, approved and executed within the 90-day time period, then the City may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

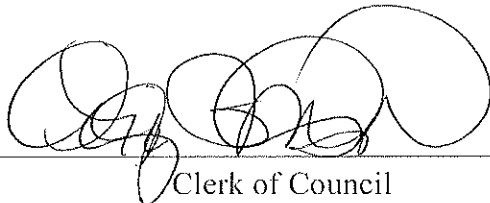

t) *Minor Modification.* Any repair, antenna modification, height modification that does not exceed the maximum permitted, ground equipment additions within the screened area as required in Section 1204.04(C)(8)o)iii), and minor structure additions may be approved by the Code Enforcement Officer and shall be required to submit an application for zoning permit."

SECTION 2: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: October 9, 2018

ATTEST:

APPROVED:


Clerk of Council
Mayor

First Reading: September 25, 2018

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.


Clerk of Council
City of Monroe, Ohio