

ARTICLE 29 WIRELESS TELECOMMUNICATIONS FACILITIES

29.01 PURPOSE AND INTENT OF WIRELESS TELECOMMUNICATION REGULATIONS

The purpose of this Article is to regulate the placement, construction, and modification of wireless telecommunication facilities and their support structures in order to protect the public health, safety and morals, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications industry in the Miami Valley Region. Specifically, the purposes of this Article are:

1. To direct the location of various types wireless telecommunication facilities into appropriate areas of Beavercreek Township;
2. Protect residential areas and land uses from potential adverse impacts of wireless telecommunication facilities;
3. Minimize adverse visual impacts of wireless telecommunication facilities through careful design, siting, landscaping and innovative camouflaging techniques;
4. Promote and encourage shared use/co-location wireless telecommunication antenna(s)/platform(s) as a primary option rather than construction of additional single-use wireless telecommunication towers;
5. Avoid potential damage to adjacent properties caused by wireless telecommunication facilities by ensuring such structures are soundly designed, constructed, modified, are appropriately maintained, and are fully removed when the use ceases;
6. To the greatest extent feasible, ensure that wireless telecommunication facilities are compatible with surrounding land uses; and
7. To the greatest extent feasible, ensure that wireless telecommunication facilities are designed in harmony with natural settings and in a manner consistent with current development patterns.

29.01.1 This Article shall not unreasonably discriminate among providers of functionally equivalent services nor shall it prohibit or have the effect of prohibiting the provision of personal wireless services. Any requests for authorization to place, construct, or modify personal wireless service facilities shall be acted upon as specified in Resolution, Article 19.03.6, after the request has been duly filed with the Beavercreek Township Zoning Inspector. Any decision to deny a request to place, construct, or

modify wireless telecommunication facilities shall be in writing and supported by substantial evidence contained in a written record. This Article shall not regulate the placement, construction, and modification of wireless telecommunication facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions.

29.02

DEFINITIONS

For the purposes of this Article, the following terms, phrases, words, and their derivations shall have the meanings given herein. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their customary meaning as defined in Webster's New World Dictionary.

Applicant Any person that applies for a permit pursuant to this Article.

Application The process by which an applicant submits a request and indicates a desire to be granted a zoning certificate under the provisions of this Article. An application includes all written and graphic documentation, verbal statements and representations, in whatever form or forum, made by an applicant to Beavercreek Township concerning such a request.

Co-location The use of a wireless telecommunication tower by more than one wireless telecommunications provider.

Engineer Any engineer licensed by the State of Ohio.

FAA The Federal Aviation Administration and any legally appointed, designated or elected agent or successor.

FCC The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Personal Wireless Services (PWS) Including cellular telephone, personal communication services (PCS) other mobile radio services, and any other FCC - licensed wireless common carriers.

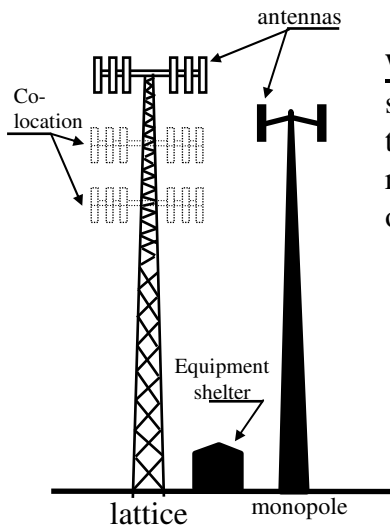
Township The township of Beavercreek.

Wireless Telecommunication Antenna Any panel, whip, dish, or other apparatus designed for communications through the sending and/or receiving of electromagnetic waves, excluding any support structure other than brackets/platforms.

Wireless Telecommunication Equipment Shelter The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

Wireless Telecommunication Facility A facility consisting of the equipment, tower, antenna, and structure involved in receiving wireless telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land based telephone lines. However, the term wireless telecommunication facilities shall not include:

- A. Any satellite earth station antenna two (2) meters in diameter or less and personal television antennas.
- B. Antennas used by amateur radio operators.



Wireless Telecommunication Tower Including but not limited to self-supporting lattice, guyed, or monopole which elevate the wireless telecommunication antenna and may include accessory transmission and receiving equipment. The term tower shall not include amateur radio operator's equipment, as licensed by the FCC.

Lattice Tower framework or structure of crossed metal strips typically resting on three or more members constructed vertically to which antennas are affixed.

Monopole A support structure constructed to a single, self-supporting hollow metal tube securely anchored to a foundation.

29.03 LOCATION OF WIRELESS TELECOMMUNICATION FACILITIES

29.03.1 PROHIBITED

Subject to Article 29.06, wireless telecommunication facilities in locations not specifically listed in this Article shall not be permitted, nor shall any zoning certificate be issued therefor.

29.03.2 PERMITTED USES IN DISTRICTS ZONED FOR RESIDENTIAL USE, ES-2.5, R-1AA, R-1A, R-1B, R-2, R-3, R-4, R-5, A-1, R-PUD, and MX-PUD

The erection, construction or replacement of a wireless telecommunication antenna(s) on a lawfully existing wireless telecommunication tower and with the necessary wireless telecommunication equipment shelter may be a permitted use as a co-location only on an existing wireless telecommunication tower.

29.03.3 ACCESSORY USES, ES-2.5, R-1AA, R-1A, R-1B, R-2, R-3, R-4, R-5, A-1, R-PUD, and MX-PUD

1. An antenna for a wireless telecommunication facility may be attached to an existing residential building four (4) or more stories in height or to an existing nonresidential structure, excluding residential accessory structures, subject to the following conditions:
 - A. Maximum Height. The antenna shall not extend more than ten (10) feet above the roof of the existing building or top of the existing structure, subject to Article 29.03.4C.
 - B. Separate Wireless Telecommunication Equipment Shelter. If the applicant proposes to locate the wireless telecommunications equipment in a separate wireless telecommunications equipment shelter, not located in or attached to the building, the equipment shelter shall comply with the accessory building regulations of the district and shall be located below existing grade.
 - C. Vehicular Access. Vehicular access to the equipment shelter shall be via the existing circulation system and subject to Article 29.04.16.
2. Failure to meet the above conditions the applicant can apply for a conditional use.

29.03.4 CONDITIONAL USES, ES-2.5, R-1AA, R-1A, R-1B, R-2, R-3, R-4, R-5, A-1, R-PUD, and MX-PUD

A wireless telecommunication facility is permitted as a conditional use upon a parcel in districts zoned for residential uses, subject to the following conditions.

- A. The minimum parcel size shall comply with the parcel requirements of the district.

- B. The minimum setback from the nearest lot line to the base of the wireless telecommunication tower shall be a 1:1 ratio in height from the nearest lot line and any structure. The equipment shelter shall comply with minimum setback requirements for the established Zoning District.
- C. The maximum height shall be less than two hundred (200) feet from the existing grade to the highest point of the wireless telecommunication facility.
- D. There is no feasible co-locatable tower site available for the applicants antenna(s) and related facilities within the geographic area to be served as provided by a radio frequency (R.F.) Engineer and subject to Article 29.04.8.
- E. As a condition of issuing a conditional zoning certificate to construct and operate a wireless telecommunication facility in the Township, the owner/operator is required to allow and agree to such co-location until said tower has reached full antenna capacity. In no event shall fewer than two (2) additional antenna platforms of equal loading capacity to the owner's/operator's antenna platform be provided for two (2) additional wireless telecommunication providers. Agreement to this provision must be included in the applicant's lease with the landowner, if different from the owner/operator of the tower. Written documentation must be presented to the Zoning Inspector evidencing that the landowner of the property on which the tower is to be located has agreed to the terms of Article 29.03.E. for co-location as well as all other applicable requirements, regulations and standards set forth in Article 29 and the parcel owner understands the taxing implications that the wireless telecommunication facility may have on the parcel.
- F. The Beavercreek Township Board of Zoning Appeals may require a bond for tower removal and site restoration.

29.04

GENERAL REGULATIONS

The regulations and conditions set forth in this Article shall apply with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a wireless telecommunication facility and all appurtenances thereto. Except as otherwise provided in this Article, all wireless telecommunication facilities shall comply with the following standards:

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1. All towers shall be of a monopole design, as opposed to a lattice design. Lattice towers existing on the effective date of this provision, however, may be rebuilt as lattice towers of the same height and volume for the purpose of increasing the structural loading capacity of the tower in order to provide for co-location of additional antennas.
2. Only one (1) wireless telecommunication tower shall be located on a parcel, unless otherwise approved by the Beavercreek Township Board of Zoning Appeals.
3. No telecommunication facility shall be located within a designated one hundred (100) year flood plain as depicted on the maps published by the Federal Emergency Management Agency.
4. No telecommunication facility shall be located within a “wetland” as defined by federal law.
5. A telecommunication facility shall not be mounted on a building or structure listed on a federal, state, or local historic register.
6. A report shall be prepared and submitted by a qualified and licensed professional engineer and shall provide proof of compliance with all applicable federal, state, and county regulations. The report shall include a detailed site plan as required by Article 19.03 of this Resolution; a detailed description and construction plans of the wireless telecommunication tower, antenna(s), equipment building, and appurtenances as well as the tower's structural loading capacity to support at least three (3) antenna platforms of equal loading capacity; and shall verify that radio frequency (electromagnetic) emissions are in compliance with the regulations established by the Federal Communications Commission (FCC), and a photograph of the proposed site prior to construction.
7. For applications for wireless telecommunication towers and related facilities, as opposed to applications for co-location of antennas and related equipment building(s), the applicant shall demonstrate that the proposed site is the most appropriate location for a telecommunication tower, equipment building, and appurtenances. The applicant shall submit a study by a qualified and R.F. engineer comparing all potential host sites for the proposed facility to the subject site. The study shall include a description of such sites and a discussion of the ability or inability of the alternative sites to host a wireless telecommunication facility. Reasons for excluding an alternative site from consideration may include, but are not limited to, the following:

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- A. Written documentation of the property owner's refusal to locate a telecommunication facility on the site;
 - B. Topographic limitations on the site;
 - C. Adjacent impediments that would obstruct transmission;
 - D. The physical constraints on the site that would preclude construction; and
 - E. Other technical limitations including a violation of federal, state, or county regulations.
8. The shared use (i.e. co-location) of pre-existing wireless telecommunication towers is preferred to the construction of new towers. For applications for wireless telecommunication towers and related facilities, as opposed to applications for co-location of antennas and related equipment building(s). The applicant shall submit a report by a qualified R.F. engineer inventorying existing wireless telecommunication facility sites within a two (2)-mile radius of the proposed site outlining the reasons each existing site may or may not be used as an alternative for co-location. The applicant shall demonstrate that co-location is not feasible for the following reasons:
- A. Written documentation of the owner's refusal to allow co-location on the existing tower;
 - B. The proposed antenna/platform would exceed the structural capacity of existing towers, provided the existing tower cannot be reinforced, modified, or replaced to accommodate the proposed antenna/platform at a reasonable cost;
 - C. The proposed antenna/platform would cause interference impacting the usability of other existing equipment at the tower or building as documented by a qualified R.F. engineer and the interference cannot be prevented at reasonable cost;
 - D. Existing or approved towers and buildings cannot accommodate the planned antenna/platform at a height necessary to function reasonably as documented by a qualified R.F. engineer;

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- E. The applicant shall demonstrate that to facilitate co-location on an identified potential wireless telecommunication tower site that they have offered to allow the owner/operator of the other wireless telecommunication tower to co-locate antenna(s) on another wireless telecommunication tower owned by the applicant within the area, if such a wireless telecommunication tower exists and that space is unavailable on the wireless telecommunication tower for co-location on reasonably reciprocal terms and the offer was not accepted.
 - F. Co-location would violate federal, state, or county regulations.
9. The applicant shall submit a plan documenting how the telecommunication facility will be maintained on the site in an ongoing manner and this document shall be a condition of approval.
 10. An antenna or the tower top shall be illuminated with a red light unless other requirements are mandated by the Federal Aviation Administration (FAA).
 11. A fence approved in design by the Beavercreek Township Board of Zoning Appeals and not less than six (6) feet in height shall fully enclose the base of the wireless telecommunication facility including anchors for guy wires. Gates shall be locked at all times when the facility is unattended by an agent of the wireless telecommunication provider.
 12. A landscaped buffer area of not less than fifteen (15) feet in depth shall be placed between the fence surrounding the wireless telecommunication facilities and the public rights-of-way and any adjacent properties with a direct view of the facilities, other than the tower itself. The fifteen (15)-foot landscaped buffer shall be of hardy evergreen shrubbery not less than six (6) feet in height and of a density to obstruct the view. The landscaping shall be continuously maintained and promptly restored, if necessary.
 13. No advertising sign(s) shall be permitted anywhere on a wireless telecommunication tower, equipment building, and appurtenances or on the site.
 14. A permanent sign with a minimum size of two (2) square feet and a maximum size of six (6) square feet shall be posted on the site as well as the emergency telephone number of the owner/operator, base elevation, Long./Lat., tower height, tip elevation, of each platform. The owner/operator shall also provide the Beavercreek fire department,

and the Beavercreek police with information on who to contact, in the event of an emergency.

15. There shall be no outdoor storage of equipment or other items on the site except during the facility construction period and to supply emergency power to the facility only during a power outage.
16. The access driveway to the wireless telecommunication facility shall, whenever feasible, be provided along the circulation driveways of the existing use on the parcel, if any. Where use of an existing driveway is not feasible, the driveway to the site shall be a minimum of fourteen (14) feet in width and shall be setback a minimum of twenty (20) feet from the nearest side or rear lot line. This driveway shall meet the load limitations and standards of the Beavercreek Fire Department.
17. A wireless telecommunication tower shall be painted a color to minimize its visibility, approved by the Beavercreek Township Board of Zoning Appeals unless otherwise required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
18. If at any time all the uses of the wireless telecommunication facility are discontinued for one (1) year, said facility shall be deemed abandoned. The Zoning Inspector shall notify the applicant in writing and advise that the facility must be reactivated within twenty (20) days or it must be dismantled, removed from the site and the site restored within sixty (60) days to a condition reasonably similar to the condition at the time of the issuance of the zoning certificate. This shall be done at the cost of the owner/operator.
19. The owner/operator of the wireless telecommunication facility shall, by January 7th of every year from the date of issuance of the zoning certificate, file a declaration with the Zoning Inspector, including verification that the radio frequency (electromagnetic) emissions are in compliance with the current Federal Communications Commission (FCC) regulations, with the appropriate fee(s) as to the continuing operation of every facility which is subject to Article 29.
20. After issuance of a zoning certificate to construct a wireless telecommunication facility, the applicant shall commence construction within one hundred eighty (180) days and shall complete construction within one (1) year or the zoning certificate shall expire.

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21. The maximum cumulative total size of all equipment buildings accessory to a wireless telecommunication tower or antenna on a parcel shall be six hundred (600) square feet and its maximum height shall be fifteen (15) feet from building grade, if not feasible to be placed below grade. All wireless telecommunication equipment shelters shall be configured to appear as one (1) building, on any one (1) parcel.
22. There shall be no tower erected between a public road and the principal building on a parcel which is nearest to the public right-of-way.
23. A wireless telecommunication tower, antenna, equipment shelter, and appurtenances shall comply with all of the regulations for the zoning district in which it is located, except as may otherwise be specified in Article 29 of this Resolution.
24. The applicant shall demonstrate to the Township that it is licensed by the Federal Communications Commission (FCC)

29.05

FEES

1. Application Fee. The fees for application for zoning certificates as required by this Article shall be as specified by the Beavercreek Township Board of Trustees.
2. Reimbursement of Expenses. The applicant for a wireless communication facility shall be responsible for all expenses incurred by the Township for any technical and/or engineering services deemed necessary by the Beavercreek Township Zoning Inspector, the Beavercreek Township Board of Zoning Appeals, or the Beavercreek Township Board of Trustees to perform the reviews and/or inspections set forth in this Article which are not covered by the application fee established by the Beavercreek Township Board of Trustees.

29.06

PUBLIC UTILITY EXEMPTION

1. In the event a wireless telecommunications facility is to be owned or principally used by a public utility engaged in the provision of wireless telecommunication services, the regulations of this Article do not apply when the proposed location of the wireless telecommunication facility is in an area of the Township which is not zoned for residential use(s). The applicant of the proposed wireless telecommunication facility must file a written application with the Beavercreek Township Zoning Inspector supported in writing by substantial evidence that the wireless telecommunication facility will be owned or principally used

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by a public utility engaged in the provision of wireless telecommunication services. The applicant must also demonstrate by substantial evidence that it possesses a sufficient degree of the following attributes associated with being a public utility to be considered a "public utility" for purposes of this exemption:

- A. Whether the applicant devotes an essential good or service to the general public which has a legal right to demand or receive this good or service;
 - B. Whether the applicant provides its good or service to the public indiscriminately and reasonably;
 - C. Whether the applicant has an obligation to provide the good or service which cannot be arbitrarily or unreasonably withdrawn;
 - D. Whether the applicant conducts its operations in such a manner as to be a matter of public concern;
 - E. Whether the good or service is vital;
 - F. Whether there is a lack of competition in the local marketplace for the good or service;
 - G. Whether there is regulation by a government authority and the extent of that regulation; and
 - H. Whether the applicant possesses the power of eminent domain.
2. This Article does not apply in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility, whether publicly or privately owned, or the use of land by any public utility, for the operation of its business. However, subject to Ohio Revised Code (R.C.) 519.211(B) and Article 29.06 of this Resolution, the provisions of this Article shall apply with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a wireless telecommunication facilities.
 3. If the Beavercreek Township Zoning Inspector determines to deny the applicant such "public utility" status, he/she shall do so in writing, and state the reasons therefor. Any determination by the Beavercreek Township Zoning Inspector that the applicant is not a public utility engaged in the provision of wireless telecommunications services may be appealed to the Beavercreek Township Board of Zoning Appeals within twenty (20) days pursuant to the procedures set forth in Article

22.07 of this Zoning Resolution. The decision of the Beavercreek Township Board of Zoning Appeals shall be the final determination on the request, unless overturned by the Court of Common Pleas.

4. In the event a wireless telecommunication facility is proposed to be located the Township, in an area zoned for residential use, and is to be owned or principally used by a public utility engaged in the provision of wireless telecommunication services, the public utility shall be exempt from the requirements of this Zoning Resolution and a certificate of exemption will be issued if it meets all of the criteria in A, B, and C below, as follows:
 - A. All of the requirements of Article 29.06. 1 through 3 are met;
 - B. The public utility provides each of the following by certified mail:
 1. Written notice to each owner of property, as shown on the County Auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the wireless telecommunication facility is proposed to be constructed and to any owner and resident whose residential dwelling is within one hundred feet of a proposed wireless telecommunication facility, stating all of the following in clear and concise language:
 - (a) The public utility's intent to construct the wireless telecommunication facility; and
 - (b) A description of the property sufficient to identify the proposed location; and
 - (c) That no later than fifteen (15) days after the date of mailing of the notice, any such property owner/occupant may give written notice to the Beavercreek Township Board of Township Trustees requesting that the provisions of this Zoning Resolution apply to the proposed location of the wireless telecommunication facility. If the notice to a property owner is returned unclaimed or refused, the applicant shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice; and

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2. Written notice to the Beavercreek Township Board of Trustees of the information specified in Article 29.06.4.B.1; and
- C. If the Beavercreek Township Board of Trustees receives notice from a property owner under Article 29.06.4.B.1. (c) within the time specified in that Article, or if a Trustee makes an objection to the proposed location of the wireless telecommunications facility within fifteen (15) days after the date of mailing of the notice sent under Article 29.06.4.B.2., the Board of Trustees shall request that the Clerk of the Township send the person proposing to construct the wireless telecommunications facility written notice that the wireless telecommunications facility is subject to the regulations of this Zoning Resolution. The notice shall be sent no later than five (5) days after the earlier of the date the Board of Trustees first receives such a notice from a property owner or the date upon which a Trustee makes an objection. Upon the date of mailing of the notice to the person, the provisions of this Zoning Resolution shall apply to the wireless telecommunications facility without exception. If the Beavercreek Township Board of Trustees, however, receives no notice under Article 29.06.4.B.1 within the time prescribed by that Article or no Trustee has an objection as provided under this Article 29.06.4.C. within the time prescribed by this Article, the applicant will be exempt from the regulations of this Zoning Resolution.