

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 8889

DATE 5-9-19

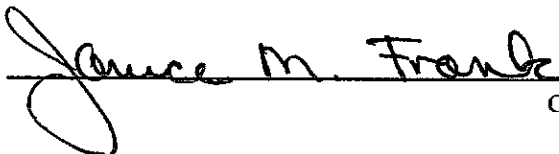
TITLE

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE COHEN LAW GROUP, TO DRAFT A ZONING ORDINANCE PERTAINING TO THE REGULATION OF WIRELESS FACILITIES

WHEREAS, the resolution authorizes a not to exceed amount of \$5500.00 dollars for drafting of the Zoning Ordinance pertaining to the regulation of wireless facilities. This will address the changes in new laws and regulations pertaining to new wireless technology, as well as protect the community.

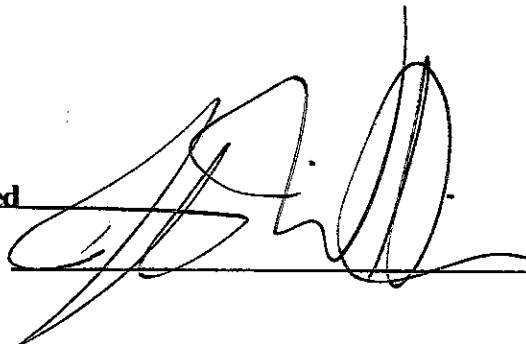
WHEREAS, the resolution authorizes an as-needed consulting fee of \$500-750 dollars in addition to the \$5500.00 dollars.

BE IT HEREBY RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WILLIAMSPORT and the Mayor and appropriate City officials are authorized to execute the attached professional services agreement with The Cohen Law Group 413 S. Main Street, Pittsburgh, PA 15215



City Clerk

Approved



President



**ZONING OFFICIAL
BUREAU OF CODES
CITY OF WILLIAMSPORT**

Memorandum

To: Jonathan Williamson, City Council President and members of City Council

CC: Gabriel Campana, Mayor, Joseph Gerardi, Code Administrator
William Nichols, Director of Finance/RVT

From: Gary Knarr, Zoning Administrator

Date: May 3, 2019

Re: Resolution authorizing an agreement for professional services

Attached for your review is a resolution authorizing an agreement with the Cohen Law Group to draft an amendment to the City's zoning ordinance pertaining to wireless facilities and guidelines.

Attached is the agreement.

Please review for your approval at the City Council meeting on May 9, 2019.

Cohen Law Group

May 3, 2019

Chris Cooley
IT & Communications Coordinator
City of Williamsport
245 West 4th Street
Williamsport, PA 17701

RE: City of Williamsport: Engagement for Wireless Facilities Management Services

Dear Chris:

I enjoyed talking to you and your colleagues this week regarding wireless facilities regulation by the City of Williamsport. As we discussed, advances in wireless technology have led to greater broadband capacity and more internet applications for smart phones, digital tablets, and, in the future, autonomous vehicles. Meanwhile, the demand for broadband services continues to skyrocket. Wireless data traffic is expected to increase six-fold over a six-year time period.¹ The wireless industry has responded with new infrastructure to boost broadband capacity. A critical aspect of these facilities, known as distributed antenna systems (“DAS”) and small cells, is that they all are located in the public rights-of-way.

Background

DAS systems deploy a network of poles, antennae, fiber, and other equipment. A DAS system includes 5-foot high antennas, control boxes and other equipment on existing utility poles. It also can include new fiberglass poles that are 25 to 120 feet in height. The number of DAS networks is expected to grow dramatically within the next several years. According to S&P Global Market Intelligence, there are an estimated 150,000 DAS facilities today. That number is expected to increase to 800,000 by the end of 2026.

This new infrastructure creates challenges for municipalities. It places new burdens on the public rights-of-way, which municipalities have the responsibility maintaining as a public trust. It also can create an adverse aesthetic impact on residential neighborhoods. Finally, it adds new costs for municipalities as they respond to the installation requests of new providers, perform permitting, inspect the new equipment, and monitor this new activity within a narrow ribbon of real estate already occupied by many utilities and other companies.

¹ According to Ericsson, mobile data traffic in North America was 1.8 exabytes per month in 2016. By 2022, it is expected to increase to 10.8 exabytes per month. Ericsson Mobility Report, June 2016. An exabyte is the equivalent of 1 billion gigabytes.

Chris Cooley
City of Williamsport
May 3, 2019

Many local governments currently have no wireless facilities ordinance at all or have not revised their ordinance (sometimes referred to as a cell tower ordinance) in decades. Williamsport has certain zoning regulations pertaining to antennas and towers, but they are minimal and pertain to older facilities. As such, the City is not prepared for the upcoming wave of new wireless facilities. There have also been major changes in the law in the last several years, including the Federal Communication Commission's ("FCC's") Shot Clock Rule of 2009, the PA Wireless Broadband Collocation Act of 2012, the FCC's October 2014 Wireless Infrastructure Report and Order, and the FCC's most recent and most consequential Third Report and Order issued in September 2018. As a result, the ordinances of these local governments, including Williamsport's, are no longer in compliance with state and federal laws.

Wireless contractors demand "speed to market" and municipalities must be prepared to respond quickly to these demands. It is critical, therefore, that local governments take a proactive approach and design a regulatory structure that enables them to respond to wireless providers in a fair and equitable manner. In addition, it will allow these municipalities to strike a balance between the need for wireless broadband and the equally important desire to preserve the character of their communities.

Our law firm is well equipped to assist the City of Williamsport in drafting a wireless facilities ordinance and design guidelines to address these new technologies and new regulations. We are uniquely qualified to assist the City in this effort. For over 21 years, we have specialized exclusively in representing municipalities in cable, wireless, and broadband matters. Collectively, our attorneys have represented over 450 municipalities in six states in these areas of the law. In the last several years, we have assisted over 150 municipalities in drafting or amending their wireless facilities ordinances.

Benefits of Wireless Facilities Regulation

There are significant benefits available to the City in drafting a new wireless facilities ordinance. The benefits available to an individual municipality depend on the specific needs of that municipality and its current wireless ordinance and regulations. The following is a list of some of these benefits, along with a brief description of each.

1. Application to New Technologies. The new wireless facilities ordinance will apply to new wireless technologies, including new towers and antennae as part of a distributed antenna system (DAS) and small cells. This includes defining new terms and redefining old terms pertaining to applicability of the ordinance, developing new regulations to manage these new technologies, and establishing approval processes for these facilities.

2. Requirements for Wireless Facilities in the Rights-of-Way. The new regulatory framework will include requirements for wireless facilities in the public rights-of-way. These may include, but are not limited to, application approval requirements, zones or specific streets/roads in which such facilities are permitted, height limitation for poles,

Chris Cooley
City of Williamsport
May 3, 2019

maximum usable space on poles, rules for collocation of antennae, and approval processes for increasing the height or configuration of poles.

3. Requirements for Wireless Facilities Outside the Rights-of-Way. The wireless facilities ordinance should include revised requirements for wireless facilities and equipment located outside the public rights-of-way. These may include, but are not limited to, measures for mitigation of visual impact, setback requirements, height limits, safety requirements, and criteria for accessory facilities, such as an equipment building and fiber from the wireless facility to its hub site.

4. Design Guidelines. We recommend that the City establish aesthetic standards for wireless facilities in the public rights-of-way. If such standards are not in place when an application is received, there would be no legal support for imposing aesthetic requirements on a proposed site. This also would limit a municipality's authority to deny applications for facilities that are aesthetically obtrusive. Aesthetic requirements include, but are not limited to, the design and types of antennas, the design of support structures, the design and placement of accessory equipment required at the site, and "stealth" requirements.

5. "New Generation" Facilities. A new wireless facilities framework should address new antennas that have been added onto towers and poles, otherwise known as "new generation" facilities. As the demand for broadband continues to grow, wireless carriers not only seek approval for new structures, but add "load" to existing structures. The additional load can create safety hazards. On the other hand, so long as there are no such hazards, you may wish to encourage "collocation" of wireless facilities to avoid the installation of new towers. A well-crafted ordinance can strike a balance between these competing interests.

6. Incorporation of Regulatory Changes. The basis for most local wireless ordinances on the books today is the federal Telecommunications Act of 1996, which is 23 years old. There have been significant regulatory changes since that time, including orders by the FCC, such as the "Shot Clock" Order of 2009, the Wireless Infrastructure Report and Order of 2014, and its most recent Third Report and Order of September 2018. A comprehensive wireless ordinance must incorporate the key changes from these new regulations.

7. Revenue Opportunities. For wireless facilities that are located on City property or in the public rights-of-way, there are revenue opportunities available. Facilities located on City property are subject to negotiated lease payments by wireless carriers. Facilities located in the public rights-of-way can be subject to application fees and recurring fees in accordance with FCC guidelines.

8. Legal Protections. It is critical to include legal protections for the municipality in the event of liability resulting from wireless facility accidents. Among other protections, these include, but are not limited to, comprehensive indemnification of the municipality, strong insurance coverage requirements, and construction and/or performance bonds.

Chris Cooley
City of Williamsport
May 3, 2019

9. Enforcement Tools. Enforcement mechanisms are necessary in the event that a provider fails to comply with the requirements in the new or revised wireless facilities ordinance. Such enforcement mechanisms must be strong enough to ensure compliance, as well as be practical in their application.

Scope of Services

The following is the scope of services that we would propose if the City engages the Cohen Law Group to assist in crafting a new wireless facilities ordinance.

A. Project Launch Conference Call and Ordinance Review

The first step of the project will be for our attorneys to ascertain the City's regulatory posture with respect to wireless facilities. We will review the City's current ordinances with respect to their regulatory requirements, district classifications, zoning map, and approval processes (e.g. administrative approvals, conditional uses, and special exceptions). We will then arrange a conference call with City officials to provide our legal assessment, listen to the City's needs and concerns, decide on priorities for wireless regulation, and make specific recommendations regarding either amendments to the City's current ordinance or an entire new wireless ordinance.

B. Preparation of Wireless Facilities Ordinance and Design Guidelines

After the first stage is completed, we will prepare a new or amended wireless facilities ordinance and design guidelines for the City. The ordinance will be specifically written to amend the City's existing Zoning Code so that any outdated ordinance provisions are removed and replaced by updated sections. It will address the newest wireless technologies, incorporate recent regulatory changes, add a fee schedule, and be crafted to preserve the character of the City's neighborhoods. It will include any provisions from the City's current ordinances that are worth retaining in the new ordinance. Finally, it will incorporate the City's priorities regarding siting of wireless facilities and appropriate approval processes.

C. Refinement and Finalization of Ordinance

After our proposed ordinance and design guidelines have been reviewed, there will most likely be one or two follow-up conference calls with City officials to provide comments and answer any questions. We will then incorporate the City's comments and suggestions into the ordinance and design guidelines as appropriate. The distribution of the final documents will complete the scope of services for the project. It is anticipated that the City Solicitor will perform the following tasks: 1) incorporate the ordinance into the current Code of Ordinances; 2) remove or amend outdated, inconsistent or ineffective current ordinances in light of the new ordinance; and 3) advertise the new ordinance for legislative consideration.

Chris Cooley
City of Williamsport
May 3, 2019

D. Consulting Services

In addition to drafting a wireless facilities ordinance and design guidelines as outlined above, our firm will be available to assist the City in any other issues relating to wireless facilities as they arise. This may include, but is not limited to, reviewing and preparing required agreements and applications, reviewing and making recommendations to the City regarding its treatment of any applications for wireless facilities, or responding to requests or communications from wireless providers. This aspect of the engagement will be performed on an as-needed basis as determined by the City and is not included in the fee estimate below.

Cost of Services

The following represents the cost of services if engaged by the City of Williamsburg to draft a new or amended wireless facilities ordinance and design guidelines. This project will be performed on an hourly basis at the blended rate of \$250 per hour. We estimate that the number of hours and fee to complete this task is as follows:

Fee Estimate for Drafting Wireless Ordinance: 22 hours or \$5,500

The estimate above does not include expenses, such as copying and postage charges, which are kept to a minimum. They also do not include any unforeseeable developments or extraordinary requests outside the scope of services in this proposal. If unforeseeable developments arise or the City requests services not contemplated in the scope of services set forth in this proposal, CLG will charge an hourly rate of \$250 per hour. While we do not anticipate that travel will be necessary for this project, we bill travel time at \$125 per hour. As noted above, any additional consulting work will be performed at this hourly rate of \$250 per hour. We bill on a monthly basis and ask that our invoices be paid within 30 days of receipt.

Thank you for the opportunity to submit this proposal to assist the City of Williamsport in wireless facilities management. If the terms of this engagement are acceptable, please have the appropriate person sign this letter and send a copy back to me. Thank you for your consideration.

Sincerely yours,

Accepted on Behalf of the City of Williamsport:

Daniel S. Cohen

Signature: _____

Print: _____

Title: Mayor

Date: 5-9-19

MDR/ai

Controller

City Clerk