

AN ORDINANCE

NO. 4272

An Ordinance To Amend The Code Of The Township Of Lower Merion, Chapter 140, Telecommunications Facilities, To Provide For Purposes Related to the Adoption of Amendments; To Provide for Definitions; To Establish Certain General And Specific Standards Relating To The Location, Placement, Construction And Maintenance Of Wireless Communications Facilities Within The Public Rights-Of-Way; To Provide For The Enforcement Of Said Regulations; And To Provide For An Effective Date.

The Board of Commissioners of the Township of Lower Merion does hereby ordain as follows:

Section 1: The Code of the Township of Lower Merion, Chapter 140, Telecommunications Facilities, Article I, Wireless Communications Facilities, is hereby repealed in its entirety and replaced with a new Article I, to be entitled Wireless Communications Facilities within the Right-of-Way, to provide as follows:

Chapter 140. Telecommunications Facilities

Article I. Wireless Communications Facilities within the Right-of-Way

§ 140-1 Purposes.

The purpose of this article is to establish general guidelines for the siting of wireless communications facilities within the public right-of-way (“ROW”). The goals of this article are to:

- A. Provide procedures and guidelines for the location, placement and construction of wireless communications facilities in the Township right-of-way and for payment of fees and charges that are uniformly applied to all persons.
- B. Provide clear performance standards and review requirements addressing the siting of wireless communications facilities.
- C. Encourage the collocation of wireless communications facilities on existing structures, including utility poles and other infrastructure in the right-of-way where technically feasible.

- D. Ensure that wireless communications facilities will be safe and blend into their environment to the greatest extent possible.
- E. Encourage collocation and site sharing of new and existing wireless communications facilities.
- F. Encourage the use of public property and structures for wireless communications facilities to the greatest extent possible and provide for mechanisms to achieve fair and equitable rental for the use of such property in compliance with state and federal law.
- G. Enhance the ability of providers of wireless communication services to provide such services to the Township quickly, effectively and efficiently.
- H. Establish guidelines and standards for the construction, installation, maintenance and operation of small wireless communications facilities in the ROW.
- I. Preserve the residential character of adjacent neighborhoods.
- J. Comply with applicable state and federal laws and regulations, including but not limited to Pennsylvania Act 50 of 2021 and the Telecommunications Act of 1996.

§ 140-2 Definitions.

- A. **Accessory Equipment** - Any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term “Accessory Equipment” includes but is not limited to utility or transmission equipment, power supplies, generators, batteries, cables, and cabinets.
- B. **Antenna** - An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.
- C. **Applicant** - Any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public right-of-way (ROW) or other Township-owned land or property.
- D. **Collocation** - The mounting of one or more WCFs, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure.
- E. **Emergency** - A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

- F. **Equipment Compound** - An area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.
- G. **FCC** - Federal Communications Commission.
- H. **Micro Wireless Facility** - A small wireless communications facility that: (1) does not exceed two cubic feet in volume; and (2) has an exterior antenna no longer than 11 inches.
- I. **Modification or Modify** - The improvement, upgrade or expansion of existing wireless communications facilities or base stations on an existing wireless support structure or the improvement, upgrade, or expansion of the wireless communications facilities located within an existing equipment compound, if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless support structure.
- J. **Person** - Individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania, provided that “Person” does not include or apply to the Township, or to any department or agency of the Township.
- K. **Replacement** - The replacement of existing wireless communications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless communications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.
- L. **Small Wireless Communications Facility (Small WCF)** - A wireless communications facility located within the right of way that meets the following criteria:
 - (1) The structure on which antenna facilities are mounted
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or
 - (iii) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
 - (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
 - (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume.

(4) The facilities do not require antenna structure registration under 47 CFR Part 17;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

M. **Stealth Technology** - Camouflaging methods applied to wireless communications facilities and accessory equipment 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.

N. **Technically Feasible** - By virtue of engineering or spectrum usage, the proposed placement for a small wireless communications facility or its design or site location can be implemented without a material reduction in the functionality of the small wireless communications facility.

O. **Utility Pole** - A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include Utility Poles or horizontal structures to which signal lights or other traffic control devices are attached.

P. **Wireless** - Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

Q. **Wireless Communications Facility (WCF)** - An antenna facility or a wireless support structure that is used for the provision of wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

R. **Wireless Support Structure** - 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 wireless service (whether on its own or comingled with other types of services).

§ 140-3 Applicability.

A. Pre-existing wireless communications facilities. Wireless communications facilities for which a permit has been issued prior to the effective date of this article shall not be

required to meet the requirements of this article, except as provided in § 140-9, nonconforming wireless communications facilities.

B. Applications not required. The Township shall not require an application for:

- (1) Routine maintenance or repair work for Small WCFs;
- (2) The replacement of a Small WCF with a Small WCF which is substantially similar or the same size or smaller and still qualifies as a Small WCF; or
- (3) The installation, placement, maintenance, operation or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles by or for an Applicant that is authorized to occupy the right-of-way, in compliance with the National Electrical Safety Code.

C. Relationship to other chapters. This article shall supersede all conflicting requirements of other chapters of this Code regarding the locating and permitting of wireless communications facilities. To the extent that there is no conflict with this article, applicants shall comply with all applicable requirements of the Code.

§ 140-4 Regulations applicable to all wireless communications facilities within the right-of-way.

- A. Small WCFs. Small WCFs shall be permitted by right in the right-of-way subject to the applicable requirements of this Article, applicable permitting, and the Township *Small Wireless Communications Facility Design Manual*. No other WCFs shall be permitted in the right-of-way.
- B. ROW use agreement. Every provider who desires to construct, install or maintain a WCF in the ROW must enter into a right-of-way use agreement with the Township as a prerequisite to the issuance of ROW use permits.
- C. ROW use permit required. Every provider who constructs, installs or maintains a Small WCF in the ROW must obtain a highway occupancy permit for each such WCF by making application to the Department of Public Works for each location and paying a fee therefor as prescribed in Chapter A167. A single application may request permits for multiple sites.
 - (1) Nature of grant. A use permit shall not convey title, equitable or legal, in the ROW. A use permit grants the right to occupy a ROW in the Township and may also grant the right to erect a new support structure.
 - (2) Support structure attachment agreement. If the wireless communications facility is to be erected on a third party's wireless support structure, the consent of the third party must be attached to the application. If the wireless communications facility is to be erected on a Township wireless support structure, the application shall

include a request therefor. If granted, the provider must enter into a support structure attachment agreement with the Township and pay an annual fee for the use of the Township's facilities.

- (3) Transfer of permit. Use permits may be transferred upon notification to the Township and acceptance by the transferee, but only to a provider who is a party to a current ROW use agreement with the Township.
- (4) Term of use permits. Use permits shall have a one-year term, automatically renewable, subject to then current code provisions and the payment of an annual use fee to the Township.
- (5) Location. The Township shall refuse to issue a use permit if the proposed location of the wireless communications facility interferes with the use of the ROW by others or is contrary to public safety. The Township shall require a permitted wireless communications facility to be relocated at the permittee's expense if necessary to accommodate the location or relocation of the ROW facilities of the Township or a public utility or to protect the public safety.

D. Application requirements.

- (1) Small WCFs inside the public Rights-of-Way are a permitted use in all Township zoning districts, subject to the requirements of this Section 140-4 and generally applicable permitting as required by the Township Code. Applications for Small WCFs shall be submitted to the Township Zoning Officer.
- (2) Small WCFs outside the public Rights-of-Way are permitted by right in certain zoning districts subject to the requirements of this Section 140-4 and generally applicable permitting as required by the Township Code. Applications for Small WCFs shall be submitted to the Township Zoning Officer.
- (3) An application for a Small WCF shall include the following:
 - (a) The location of the proposed Small WCF, including latitudinal/longitudinal coordinates and the nearest street address or cross street;
 - (b) Documentation demonstrating compliance with the requirements of this Section 140-4, including construction and engineering drawings;
 - (c) Self-certification that the filing and approval of the application is required by the Applicant to provide additional capacity or coverage for wireless services;
 - (d) Documentation demonstrating compliance with the requirements of the Small WCF Design Manual;

(e) If the Small WCF will require the installation of a new Utility Pole, documentation showing that the Applicant has made a good faith determination that it cannot meet the service reliability and functional objectives of the application by Collocating on an existing Utility Pole. Such determination shall be based on whether the Applicant can meet the service objectives of the application by Collocating on an existing Utility Pole on which:

[1]. The Applicant has the right to Collocation;

[2]. The Collocation is Technically Feasible and would not impose substantial additional cost; and

[3]. The Collocation would not obstruct or hinder travel or have a negative impact on public safety.

(f) Documentation showing that the Small WCF does not materially interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement;

(g) A report prepared by a qualified engineering expert which shows that the Small WCF will comply with all applicable FCC regulations, including but not limited to those relating radiofrequency emissions;

(h) Documentation showing all supporting improvements, including but not limited to related fiber, power supplies and electric wiring, accessory equipment and necessary street cuts; and

(i) All application fees required by the Township fee schedule.

E. All applications for installation of a wireless communications facility shall include a sworn affidavit from a radio frequency engineer that the placement of the wireless communications facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communication services enjoyed by adjacent residential and nonresidential properties in compliance with federal law.

F. The Telecommunications Act of 1996 gives the FCC sole power to regulate radio frequency ("RF") emissions and does not allow the Township to condition or deny on the basis of RF impacts the approval of any wireless communications facilities which meet or exceed FCC standards. In order to make available information to Township citizens, the applicant shall provide to the Township copies of ongoing FCC information and RF

emission standards for transmissions from a wireless communications facility. Applicants shall be required to submit information on the proposed power intensity of their wireless communications facilities. Applicants shall demonstrate that the proposed wireless communications facilities comply with all FCC standards relating to radio frequency emissions and shall supplement that information upon the request of the Township no less frequently than annually. Once installed, any technical change that could increase power or output of the wireless communications facility shall be immediately reported to the Township.

- G. All applications shall include a copy of the provider's current Federal Communications Commission license. The provider shall maintain with the Township the current name, address and emergency telephone number of the owner or operator of the support or wireless support structure on which the WCF is mounted.
- H. Upon receipt of an application, the applicant shall mail notice thereof to the owner or owners, if their residence is known, or to the occupier or occupiers of every residentially zoned property on the same street within 500 feet of the site of the proposed facility and of every residentially zoned property not on the same street within 150 feet of the proposed facility. Notice of the proposed small WCF and related construction shall be provided to any utility companies that coexist in the right-of-way immediately adjacent to the proposed small WCF. The applicant shall provide documentation to the Township that such notice has been provided.
- I. Applicants proposing an Eligible Facilities Request pursuant to 47 U.S.C. §1455 shall be required only to obtain a building permit from the Director of Public Works. In order to be considered for such permit, the Applicant must submit a permit application to the Township in accordance with applicable permit policies and procedures.
- J. An application for a wireless communications facility requiring the installation of a new wireless support structure shall demonstrate that the proposed wireless communications facility cannot be accommodated on an existing building, structure or tower. The Township may deny an application to construct a new wireless support structure if the Applicant has not made a good faith effort to mount the WCF on an existing building, structure or tower. The Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one-quarter (1/4) mile radius of the site proposed, sought permission to install the proposed WCF on those structures, buildings, and towers and was denied for one of the following reasons:
 - (1) The proposed antenna and accessory equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - (2) The proposed antenna and accessory equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.

- (3) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (4) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- K. Insurance. Each Person that owns or operates a small WCF shall provide the Director of Building and Planning with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the WCF.
- L. The owner or operator of a WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the WCF. The owner or operator of a WCF shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- M. All plans and drawings for a WCF shall contain a seal and signature of a professional structural engineer and surveyor, licensed in the Commonwealth of Pennsylvania.
- N. Standard of Care.
 - (1) All WCFs 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 American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, or to the industry standard applicable to the structure. Any WCF 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 damage any property in the Township.
 - (2) In all cases, the construction must comply with standards approved by the Township Engineer and Director of Public Works.
 - (3) No WCF shall, at any point during its construction or operation, prohibit any Township facility from performing its primary function.

- O. All WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, National Electrical Safety Code, National Electrical Code, or to the industry standard applicable to the structure.
- P. WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- Q. Any graffiti on the wireless support structure or on any accessory equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the Township.
- R. Wireless support structure. The antenna and accessory equipment must be mounted on a monopole wireless support structure, such as a Utility Pole, in compliance with construction standards approved by the Township Engineer and the applicable requirements of the Lower Merion Township "Small WCF Design Manual," a copy of which shall be kept on file at the Township Department of Building and Planning.
- S. Accessory Equipment. Small WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Township.
- T. Design requirements. All Small WCFs shall comply with the applicable requirements of the Lower Merion Township "Small WCF Design Manual," a copy of which shall be kept on file at the Township Department of Building and Planning.
- U. Consolidated Application.
 - (1) An Applicant may submit a consolidated application for Collocation of multiple Small WCFs. The consolidated application shall not exceed twenty (20) Small WCFs.
 - (2) An Applicant may not submit more than one consolidated application in a single 30-day period.
- V. Completion of Work. All construction work relating to the Small WCF for which a permit is granted under this Section 140-4 shall be completed within one (1) year of the date of issuance of the permit.
- W. Repair and Restoration.
 - (1) The Applicant shall repair all damage to the ROW or any other land so disturbed, directly caused by the activities of the Applicant or the Applicant's contractors and return the ROW to as good of condition as it existed prior to any work being done in the ROW by the Applicant or the Applicant's contractors, as determined

by the Township and subject to all applicable restoration requirements of the Township Code.

- (2) If the Applicant fails to make the repairs required by the Township within thirty (30) days after written notice, the Township may perform those repairs and charge the Applicant the reasonable, documented cost of the repairs plus a penalty of \$500.
- (3) The Township may suspend the ability of the Applicant to receive new permits until the Applicant has paid the amount assessed for the repair costs and the assessed penalty.

X. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.

§140-5 Wireless communications facilities within railroad right-of-way.

- A. Uses permitted. Any wireless communications facility is permitted in a railroad ROW subject to the requirements of this section 140-5.
- B. Wireless support structure. The WCF must be mounted on an existing wireless support structure no more than 100 feet in height if within 150 feet of a residential zoning district. If elsewhere, it may be mounted on a wireless support structure no more than 200 feet in height. In all cases, the construction must comply with standards approved by the Township Engineer.
- C. Building permit required. Every provider who constructs, installs or maintains a wireless communications facility in a railroad ROW must obtain a building permit for each such facility by making application to the Department of Building and Planning.
 - (1) Support structure attachment agreement. If the WCF is to be erected on a third party's support or wireless support structure, proof of the consent of the third party must be attached to the application.
 - (2) Location. The Township shall refuse to issue a building permit if the proposed location of the wireless communications facility interferes with the use of a ROW by others or is contrary to public safety. The Township shall require a permitted wireless communications facility to be relocated at the permittee's expense if necessary to accommodate the location or relocation of ROW facilities of the Township or a public utility or to protect the public safety.
- D. Accessory equipment facility. An accessory equipment facility required for a wireless communications facility shall comply with the following requirements:

- (1) The accessory equipment facility must be located within the railroad right-of-way unless it complies with Subsections (4)(a)(1) and (2) below.
 - (a) The accessory equipment facility may be located outside the railroad right-of-way, provided that such accessory equipment is located in an adjacent public utility right-of-way/easement, subject to the approval of the Director of Public Works. If an applicant is proposing a WCF with accessory equipment located outside of the railroad right-of-way, the applicant shall furnish to the Director of Building and Planning proof that the property has authorized the installation of such accessory equipment.
 - (b) Approval from the owner of the land on which the accessory equipment is located shall be obtained prior to installation of any accessory equipment authorized under this section. Proof of such approval shall be provided to the Township as part of an application for a small WCF.
- (2) All accessory equipment facilities shall be screened from adjacent residential properties by a planted buffer that provides a total visual screen of any accessory equipment. The buffer plantings shall be installed and maintained by the applicant.
- (3) In the event that any accessory equipment facility of an outside volume exceeding eight cubic feet is installed in the ROW, such accessory equipment facility must be installed so that the roof or lid is either below or is flush with local ground level grade. All such accessory equipment facilities shall be shown in the application. The Board of Commissioners may grant a waiver to this requirement, on a case-by-case basis, upon the applicant's showing of need.
- (4) All accessory equipment shall be clearly marked with a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted shall be that required by the FCC or any other federal or state agency.

§140-6 Payments to Township.

- A. The fees, charges and rental prescribed by the Board of Commissioners and which must be paid for the installation and maintenance of a wireless communications facility in the Township are set forth in the Telecommunications Fee Schedule contained in Chapter A167, Fees, hereof.
- B. Payments and charges relating to the construction and maintenance of Small WCFs in the ROW.
 - (1) The applicant shall pay the Township an application fee as described in the Telecommunications Fee Schedule at the time of filing the application.

- (2) For Small WCFs installed in the ROW, the applicant must pay an annual ROW use fee as set forth in Chapter A167, Fees.
 - (3) For Small WCFs located on Township owned wireless support structures in the ROW, the applicant must also enter into a support structure attachment agreement with the Township and pay the Township the rental fees therefore described in the Telecommunications Fee Schedule.
 - (4) Other charges or fees may be applicable as set forth in Chapter A167, Fees, depending on the extent of use of ROW, and shall be calculated by the Township Manager or his/her designee in conjunction with the application review.
- C. Timing and place of payment. Unless otherwise agreed to in writing, all fees shall be paid with the submission of a permit application. Payments shall be delivered to the attention of the director of the Building & Planning Department.
 - D. Taxes and assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of Township property as a result of an applicant's use or occupation of the ROW or of Township owned or leased property, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority. No rental payment shall constitute a payment in lieu of any tax, fee or other assessment, except as specifically provided in this article or as required by applicable law.
 - E. Interest on late payments. In the event that any fee is not actually received by the Township on or before the applicable date fixed in the use agreement, interest thereon shall accrue from such date until received at 15% per annum.

§140-7 Maintenance.

- A. Wireless communications facility providers shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- B. Wireless communications facility providers shall install and maintain wireless communications facilities, wires, cables, fixtures and other equipment, and shall perform in substantial compliance with the requirements of the National Electric Code, the industry standard applicable to the structure, and all federal, state and local regulations and building codes, including those relating to trenching and sidewalk cuts, and in such manner that will not interfere with the use of other property.
- C. Wireless communications facilities 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 menace or endanger the life or property of any person.

- D. Noise. Wireless communications facilities shall be operated and maintained so as not to produce noise in excess of the applicable noise standards under state law or the Township code, except in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis.
- E. Discontinuance. In the event that the use of a wireless communications facility is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. If such wireless communications facility is not removed within 90 days of such notice, the Township may remove it at the owner's expense.
- F. Inspections. The Township and/or its agents shall have authority to enter onto the property upon which a wireless communications facility is located at any time, upon reasonable notice to the provider (which notice shall provide an opportunity for the provider's supervision of such entry), for any purposes associated with the permitted use of the property, including, but not limited to, the purpose of determining whether the wireless communications facility complies with this article, Chapter 62, Building Construction, of the Lower Merion Township Code and all other construction standards provided by the Township's code and federal and state law.

§140-8 Decision on application.

A. Eligible Facilities Requests.

- (1) Within ten (10) calendar days of receipt of an application for an Eligible Facilities Request pursuant to 47 U.S.C. §1455, the Director of Building and Planning shall notify the applicant in writing of any information that may be required to complete such application.
- (2) Within sixty (60) days of receipt of an application, and subject to applicable tolling procedures, for an Eligible Facilities Request pursuant to 47 U.S.C. §1455, the Director of Building and Planning shall issue the required building and zoning permits authorizing construction of the WCF. All applications for such WCF shall designate that the proposed WCF meets the requirements of an Eligible Facilities Request.

B. Small Wireless Communications Facilities.

- (1) Within ten (10) business days of the date that an application for a small WCF is filed with the Director of Building and Planning, the Director of Building and Planning shall notify the Applicant in writing of any information that may be required to complete such application.
- (2) Within sixty (60) days of receipt of an application for collocation of a small WCF on a preexisting wireless support structure, unless extended by the Applicant and subject to applicable tolling procedures, the Director of Building and Planning

shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.

- (3) Within ninety (90) days of receipt of an application for a small WCF requiring the installation of a new wireless support structure, unless extended by the Applicant and subject to applicable tolling procedures, the Director of Building and Planning shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.
 - (4) If the Township denies an application for a Small WCF, the Township shall provide the Applicant with written documentation of the basis for denial, including the specific provisions of the Township Code on which the denial was based, within five (5) business days of the denial.
 - (5) The Applicant may cure the deficiencies identified by the Township and resubmit the application within thirty (30) days of receiving the written basis for the denial without being required to pay an additional application fee. The Township shall approve or deny the revised application within thirty (30) days of the application being resubmitted for review.
- C. A decision to deny the application shall be preliminary and shall become final only after the applicant has received the preliminary decision and has been given 10 days within which to request a hearing before the Building and Planning Committee of the Board of Commissioners. If such a hearing is not requested, the decision shall become final at the end of the ten-day period. If a hearing is requested, a written record shall be made, and the Building and Planning Committee shall render a final, written decision supported by substantial evidence contained in the written record within 45 days of the close of the hearing.
- D. The Township reserves the right to deny any application on its merits and also where any one of the following conditions exist:
- (1) The applicant is not licensed by the Federal Communications Commission as a provider or is not authorized to conduct business in the Commonwealth of Pennsylvania; or
 - (2) The applicant has failed within the past three years to comply or is presently not in full compliance with the requirements of this article; or
 - (3) The applicant is in default of its obligation to pay to the Township fees imposed by this article.
- E. The placement of any wireless communications facility in an historic district or in a ROW adjacent thereto, or on a historic building, must receive a certificate of appropriateness from the Board of Commissioners.

§140-9 Nonconforming wireless communications facilities.

Wireless communications facilities in existence on the date of the adoption of this article, which do not comply with the requirements of this article (nonconforming wireless communications facilities), are subject to the following provisions:

- A. Any provider maintaining a nonconforming wireless communications facility not subject to a ROW use agreement in a ROW must enter into a ROW use agreement and secure a ROW use permit within 90 days of the enactment of this article. By doing so the provider may continue, but not expand, use of such facilities, except as provided in this section.
- B. Additional wireless communications facilities (belonging to the same or another provider) may be added to a nonconforming wireless communications facility in conformance with the application procedures set forth in this article.
- C. Nonconforming wireless communications facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired or restored at their former location, but must otherwise comply with the Township Code.
- D. A provider may replace, repair, rebuild and/or expand its wireless communications facility in order to improve the structural integrity of the facility, to allow the facility to accommodate collocated antennas or facilities or to upgrade the facility to current engineering, technological or communication standards without having to conform to the provisions of this article, so long as such facilities are not increased in height by more than 10% and/or setbacks are not decreased by more than 10%.

§140-10 Violations and penalties.

- A. Any person who shall erect, construct, reconstruct, alter, repair, convert, attach or maintain any wireless communications facility in violation of any of the terms of this article, or who, being the owner or agent of the owner of any lot, tract or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach or maintain any such facility, shall be deemed to have violated the provisions hereof and shall be subject to a fine of up to \$600 per day during the period such violation shall exist, collected as like fines or penalties are by law collected.
- B. If any wireless communications facility is erected, constructed, reconstructed, altered, repaired, converted, attached or maintained in violation of this article or of any regulations made pursuant hereto, the proper officer of the Township, in addition to other remedies, may institute in the name of the Township any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment or use, to restrain, correct or abate such violation, to prevent the use of such facility and/or to prevent any illegal act, conduct, business or use in or about such facility.

Section 2. Nothing in this ordinance or in Chapter 140 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 140 prior to the adoption of this amendment.

Section 3. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

Section 4. This Ordinance shall take effect and be in force on and after its enactment as provided by law.

Approved by the Board this 19th day of July, 2023.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary