

ORDINANCE 2020-1

An Ordinance of the Township of Millcreek, Erie County, Pennsylvania, Providing for the Amendment of Chapter 145 of the Millcreek Township Code to Include Regulations Governing Small Wireless Communication Facilities.

WHEREAS, Millcreek Township previously adopted ordinances regulating wireless communication facilities located within the Township; and

WHEREAS, the Federal Communications Commission ("FCC") issued an order concerning municipal regulation of Small Wireless Facilities ("2018 Small Cell Order") that became effective on January 14, 2019; and

WHEREAS, in order to comply with the FCC's 2018 Small Cell Order, the Township desires to adopt regulations governing the installation of Small Wireless Facilities within the Township, and amend other regulations relating to wireless communication facilities.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Millcreek Township, Erie County, Pennsylvania and it is hereby enacted and ordained as follows:

SECTION 1. The caption of and recitals to this Ordinance as set forth above are incorporated herein by reference.

SECTION 2. Repealed and Replaced. Section 145-64D(1)(h) of Chapter 145, Article VI, Supplementary Regulations of the Millcreek Township Code is repealed and replaced as follows:

§ 145-64D(1)(h). Reserved.

SECTION 3. Amendment. Chapter 145, Article II, Terminology, Section 145-11, Definitions, of the Millcreek Township Code is amended as follows:

§ 145-11. Definitions.

Substantially Change or Substantial Change - A modification substantially changes the physical dimensions of an eligible support structure, as defined in 47 C.F.R. § 1.6100(b)(4), if it meets any of the following criteria:

- i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

- A. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act¹.
- ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- iv. It entails any excavation or deployment outside the current site;
- v. It would defeat the concealment elements of the eligible support structure; or
- vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. § 1.40001(b)(7)(i) through (iv)².

SECTION 4. Amendment. Chapter 145, Article VI Supplementary Regulations, of the Millcreek Township Code is amended as follows:

§ 145-76.1. Small Wireless Facilities.

A. Definitions. For the purposes of this Section, the terms below shall have the following meanings:

¹ Middle Class Tax Relief and Job Creation Act (the Spectrum Act), 47 U.S.C. 1401 et seq.

² Redesignated 1.6100 by 83 FR 51886.

"Action or to act on a siting application" means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

"Antenna," consistent with 47 C.F.R. § 1.1320(d), means 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 personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

"Antenna equipment," consistent with 47 C.F.R. § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

"Antenna Facility" means an antenna and associated antenna equipment.

"Collocation," consistent with 47 C.F.R. § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of "collocation" in 47 C.F.R. § 1.6100(b)(2) applies to the term as used in that section.

"Facility or personal wireless service facility" means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

"Modification or modify" means the improvement, upgrade or expansion of existing Small Wireless Facilities on an existing structure if the movement, upgrade, expansion or replacement does not substantially change the physical dimensions of the structure.

"Siting application or application" means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

"Siting authority" means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

"Small Wireless Facility," consistent with 47 C.F.R. § 1.6002(1), means a facility that meet each of the following conditions:

- (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, whichever is greater, as a result of the collocation of new antenna facilities;
- (2) Each antenna (excluding associated antenna equipment), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration;
- (5) The facility is not located on Tribal lands; and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

"Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

"Wireless Infrastructure Provider" means a person that owns, controls, operates, or manages a Small Wireless Facility or portion thereof within the right-of-way.

"Wireless Service Provider" means an entity that provides wireless services to end users.

B. Applicability. The provisions of this Section shall apply only to Small Wireless Facilities. Sections 145-64 and 145-76 of the Millcreek Township Code shall not apply to Small Wireless Facilities.

C. **Small Wireless Facilities.** The following regulations shall apply to Small Wireless Facilities:

(1) Permitting

(a) Administrative Approval Required. An application for the construction or modification of a Small Wireless Facility is required to be submitted to the Zoning Administrator and a zoning permit issued prior to the commencement of construction or modification of the Small Wireless Facility. Any application for such permit shall be submitted in accordance Chapter 145, Article X of Chapter 145, Section 145-105 of the Zoning Code. Commencing the construction or modification of Small Wireless Facility without a zoning permit is a violation of this Chapter.

(b) Additional application requirements. In addition to the application requirements of Article X, Administration and Enforcement, Section 145-105, each Small Wireless Facility application shall have the following:

- i. All information required pursuant to the Small Wireless Facilities regulations.
- ii. The name of the applicant (including any corporate or trade names), and the name, address, e-mail address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the Small Wireless Facilities must also be provided. The name and contact information (email; phone; address) of a person or entity at the permit holder and/or wireless service provider to contact in emergency situations (hereinafter "Emergency Contact").
- iii. A statement of which shot clock or shot clocks applicant believes apply to the application and the reasons the chosen shot clock applies. The shot clocks governing the application shall be consistent with those established by FCC Order FCC-18-133, adopted September 26, 2018.
- iv. A separate and complete description of each proposed Small Wireless Facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit if a residential dwelling unit is within 1000 feet of the Small Wireless Facility. Before and after 360-degree photo simulations must be provided for each facility. This

shall be accomplished by providing a site plan consistent with wireless engineering standards, provided it includes the above information.

- v. Proof that application was mailed to owners of all property within 100 feet of the proposed Small Wireless Facility.
- vi. A sworn statement from the applicant attesting that the Small Wireless Facility will comply with current FCC regulations. This may be accomplished by the applicant providing copies of its FCC license.
- vii. To the extent that filing of the Small Wireless Facilities permit application establishes a deadline for action on any other permit that may be required in connection with the Small Wireless Facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
- viii. A certification by a registered and qualified engineer licensed in the Commonwealth of Pennsylvania that the installation can be supported by and does not exceed the tolerances of the structure on which the Small Wireless Facility will be mounted and that all elements of the Small Wireless Facility comply with applicable safety standards.
- ix. A certification by the permit applicant that (i) the wireless service provider applicant has plans to use the proposed facility within thirty (30) days of completing construction of the facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has plans to use the proposed facility within thirty (30) days of completing construction of the facility.
- x. Payment of all required fees.

(c) Application Process.

i. Processing Timeline.

A. Collocated Facilities. Within sixty (60) days of receipt of a complete application for collocation of a Small Wireless Facility on a preexisting structure, the Township Zoning Administrator shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

B. New Facilities. Within ninety (90) days of receipt of an application for a Small Wireless Facility requiring a new structure, the Township Zoning Administrator shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

C. Batching.

1. If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in Section 145-76.1C(1)(c)(i)(A) and Section 145-76.1 C(1)(c)(i)(B), then the period of time the Township has to render a decision is equal to the time period for a single deployment within that category.
2. If a single application seeks authorization for multiple deployments, the component of which are a mix of collocated and new facilities, then the time period for the Township to render a decision is ninety (90) days.

CI. Small Wireless Facility permit applications, including applications for other permits under Section 145-76.1C(1)(b)(vii) will be processed in conformity with the timeframes set forth above.

ii. Review for Completeness.

A. Generally.

1. Within ten (10) days of receipt of an initial application or a supplemental application for a Small Wireless Facility, the Township Zoning Administrator shall make a determination as to the completeness of the application. If the application is deemed to be incomplete, the Township Zoning Administrator shall notify the applicant in writing of the documents or information required to complete the application and the specific rule or regulation creating the obligation to submit such documents or information.
2. If a determination as to completeness of an application is not made within ten (10) days of receipt of an initial application, the Zoning Administrator shall make a determination as to completeness of the application within thirty (30) days of receipt of the application. If the application is deemed to be incomplete, the Township Zoning Administrator shall notify the applicant in writing of the documents or information required to complete the application and the specific rule or regulation creating the obligation to submit such documents or information.

B. Rejection for Incompleteness.

1. Initial Application.

- a. If a Small Wireless Facilities application is rejected for incompleteness within ten (10) days of receipt of an initial application, the shot clock shall restart at zero on the date on which the applicant submits all the documents and information identified by the Zoning Administrator to render the application complete.
 - b. If the Zoning Administrator rejects the initial application for a Small Wireless Facility more than ten (10) days after receipt but not more than thirty (30) days after receipt, the shot clock shall be tolled until the applicant submits the additional information.
 - 2. Supplemental Application. If a Small Wireless Facilities supplemental application is submitted following a notice of deficiency and it is rejected for incompleteness within ten (10) days of receipt of receipt, the shot clock shall be tolled until the applicant submits the additional information.
 - iii. Written Decision. The Zoning Administrator shall issue a written decision for all applications. In the event that the application is denied, the Zoning Administrator shall issue a written decision with the reasons therefore.
- (d) Standard Permit Conditions. All Small Wireless Facility permits under this Section are issued subject to the following minimum conditions:
 - i. *Compliance*. The permit holder shall at all times maintain compliance with all applicable Federal, State, and local law, regulations, and other rules.
 - ii. *Contact Information*. The permit holder shall at all times maintain with the Township accurate contact information for the permit holder and all wireless service providers making use of the Small Wireless Facility, which shall include a phone number, mailing address, and e-mail address for at least one natural person.
 - iii. *Emergencies*. The Township shall have the right to support, repair, disable, or remove any elements of a Small Wireless Facility in emergencies or when the Small Wireless Facility threatens imminent harm to persons or property. If the circumstances allow, Township shall attempt to provide notice to the Emergency Contact prior to taking action, but in any event shall provide notice of an action taken to the Emergency Contact no later than 2 business days after such action was taken.

- iv. *Adverse Impacts on Adjacent Properties.* The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the Small Wireless Facility.
- v. *Insurance.* Each person who owns or operates a Small Wireless Facility shall provide the Township 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 such Small Wireless Facility.
- vi. *Indemnification.* Each person that owns or operates a Small Wireless Facility 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 Small Wireless Facility. Each person that owns or operates a Small Wireless Facility 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 a Small Wireless Facility. 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.
- vii. *Relocation.* At the request of the Township pursuant to its police powers or any other authority granted by the Second Class Township Code and Pennsylvania Constitution, Law or regulations and Section 145-76.1C(5) of this Chapter, the permit holder of a Small Wireless Facility, upon reasonable notice by the Township, shall promptly and at its own expense permanently remove and relocate any Small Wireless Facility in the right-of-way. In the event of a relocation under this paragraph, Township may waive any fees relating to an application for a replacement location and may take such other actions to assist the permit holder to relocate the facility as the Township deems necessary.
- viii. *Abandonment.* The permit holder of a Small Wireless Facility shall promptly notify the Township within ten (10) days of when a Small Wireless Facility has not been in use for a continuous period of sixty (60) days or longer and must comply with Section 145-76.1C(4) of this Chapter.

- ix. *Restoration.* A permit holder of a Small Wireless Facility who removes or relocates a Small Wireless Facility from the right-of-way must restore the right-of-way in accordance with Section 145-76.1C(6) of this Chapter.
- x. *Wind and ice.* All Small Wireless Facilities shall be designed to withstand ice accumulation and the effects of wind gusts of at least 100 miles per hour in addition to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended), or to the industry standard applicable to the structure.
- xi. *Aviation safety.* Small Wireless Facilities shall comply with all federal and state laws and regulations concerning aviation safety and with Chapter 70, Land, Miscellaneous Activities and Regulations, Part 2, Airport Zoning.
- xii. *Graffiti Removal.* All graffiti on Small Wireless Facilities or on any Antenna Equipment shall be removed by the permit holder at its sole expense within ten (10) business days of notification by the Township.
- xiii. *Maintenance.* To the extent permitted by law, the following maintenance requirements shall apply:
 - A. The Small Wireless Facility shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or repair.
 - B. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
 - C. All maintenance activities shall utilize the best available technology for preventing failures and accidents.
- xiv. *Public safety communications.* Small Wireless Facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- xv. *Radio frequency emissions.* Radio frequency emissions. A Small Wireless Facility shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

xvi. *Transfer of Permit.* A permit for a Small Wireless Facility must be transferred or notification provided to the Township Zoning Administrator as follows:

- A. If the owner of a Small Wireless Facility and permittee are the same person and there is a change in ownership, the permit must be transferred to the new owner of the Small Wireless Facility.
- B. If the owner and permittee are not the same person and there is a change of permittee, but not ownership of the Small Wireless Facility, the permit must be transferred to the new permittee.
- C. If the owner and the permittee of the Small Wireless Facility are not the same person and there is a change in ownership, by not permittee of the Small Wireless Facility, the change in ownership must be reported by the permittee to the Township Zoning Administrator in writing within thirty (30) days.
- D. A permit will only be transferred upon application to and approval by the Township.
- E. A permit may not be transferred if a violation of this chapter exists at the time of application of the transfer unless the transfer will expedite correction of the violation.
- F. The new permittee shall expressly agree to abide by the permit conditions set forth in Section 145-76.1C(1)(d).
- G. The original permittee will not be relieved of an obligation to comply with this chapter or the terms and conditions of the permit until the transfer has been approved.

(e) Permit Fees.

- i. Collocated Facilities. The Township shall by resolution establish the fees to be assessed for Collocated Facilities. Under the Pennsylvania Wireless Broadband Collocation Act (53 P.S. § 11702.1 et seq.), the Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a collocated Small Wireless Facility. In addition, the FCC's presumptively valid fee limits set forth that a one-time application fee shall be \$500 covering up to five Small Wireless Facilities placed on existing poles, with an additional \$100 for each Small Wireless Facility beyond the first five. Furthermore, under the FCC rule, in the event that the Township's actual costs in reviewing and processing the application for approval exceed presumptively valid fee limits, the Township may assess appropriate and reasonable permit fees directly related to the Township's actual cost in

reviewing and processing the application for approval of a Small Wireless Facility.

- ii. New Facilities. The Township shall by resolution establish the fees to be assessed for New Facilities. Under the FCC's presumptively valid fee limits, the application fee for a Small Wireless Facilities application requiring a new pole may be a maximum of \$1,000 per new pole. In addition under the FCC rule, in the event that the Township's actual costs in reviewing and processing the application for approval exceed \$1,000, the Township may assess appropriate and reasonable permit fees directly related to the Township's actual cost in reviewing and processing the application for approval of a Small Wireless Facility.

(2). Location and development standards.

- a. Zoning Districts. A Small Wireless Facility is a use permitted in all zoning districts subject to the regulations of this Section 145-76.1.

- b. Design aesthetic standards.

- i. Location.

- 1. General. All Small Wireless Facilities shall be sited to avoid or minimize land use conflicts in accordance with the following standards:

- a. The most desirable location for new wireless telecommunications facilities is co-location on existing facilities
 - b. The following list of preferred locations for wireless telecommunications facilities is in order of preference from most to least preferred: Industrial, public or quasi-public, commercial zoning districts.
 - c. The following less preferred locations are listed in order of preference from most to least preferred: Parks or open space and residential zoning districts.
 - d. Wireless communication facilities shall not be located on historically or architecturally significant structures unless visually and architecturally integrated with the structure and shall not interfere with prominent vistas or significant public view corridors.
 - e. If an applicant chooses to not collocate, any new pole must be fifty (50) feet from any pole on which it was technically feasible to collocate.

- 2. Location restrictions

- a. Unless approved by the Township and/or Penn DOT if applicable, facilities and structures must not be located within sight triangles as follows:
 - i. 5-foot leg pedestrian sight triangle at each residential driveway; and
 - ii. 10-foot leg pedestrian sight triangle at each non-residential driveway; andAn illustration of the sight triangles can be found in Appendix A.
- b. The following restrictions apply to locating facilities and structure within the 30-foot leg corner sight triangle:
 - i. No facility or structure may block or obstruct any traffic signal or sign.
 - ii. No facility or structure may block or obstruct any sight lines.An illustration of the sight triangles can be found in Appendix A.
- c. To the extent possible, a facility, or structure should be located and designed so as to avoid interference with right-of-way maintenance activities, such as:
 - i. Grass mowing, brush collection, tree trimming, and landscaping maintenance;
 - ii. Trash collection;
 - iii. Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
 - iv. Maintenance of other facilities in the rights-of-way.
- d. Facilities and structures at all times must comply with the requirements of the Americans with Disabilities Act of 1990 and all regulations issued thereunder (“ADA”), and shall not encroach or interfere with any accessible facilities including, but not limited to, sidewalks, ramps, and transitions or render such facilities non-compliant with the ADA.
- e. Facilities and structures must be located in alignment with existing utility poles and streetlights.
- f. Structures must not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
- g. To the extent possible, new facilities and structures within the right-of-way must be located along an extension of the lot line shared between two lots in line with existing lot lines, but in areas where multiple structures abut each other structures must not be located directly in front of an entrance or window of any existing structure.
- h. A combination structure and street light pole should only be located where an existing pole can be removed and

replaced, or at a new location where the Township has identified that a streetlight is necessary.

- i. Tree “topping” or the improper pruning of trees is prohibited. Any proposed pruning of trees, shrubs, or other landscaping already existing in the right-of-way must be noted in the application and approved by the Township.
- j. To the extent it is technically feasible, if a permit holder installs a new facility, the permit holder must allow other Small Wireless Facilities to collocate on the permit holder's facility.

ii. Height restrictions and requirements.

1. The height of a facility may not exceed 50 feet above ground level or be more than 10 percent taller than other adjacent structures.
2. The collocation of new antenna facilities may not extend a structure to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater.
3. Equipment mounted to structures must not interfere with or create a hazard to pedestrian or vehicular traffic and must be a minimum of 10 feet above any pedestrian or bicycle thoroughfare and a minimum of 15 feet above any traffic lane if the equipment faces the road.

iii. General aesthetic standards. Permits for Small Wireless Facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

1. Antennas located at the top of structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure provided such can be done without impacting the ability of the antenna to function.
2. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the utility pole. Radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.
3. Wiring and cabling shall be neat and concealed within or flush to the structure, ensuring concealment of these components to the greatest extent possible.

4. Ground-mounted equipment associated with a facility shall be permitted only when no possibility of pole mounting exists. Ground-mounted equipment shall be as small and unobtrusive as possible, and match the aesthetics of other ground-mounted utility equipment in the area. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
 5. In areas where all utilities are provided underground, collocation on existing street light poles, or replacement of existing street light pole with a new structure matching the style of the existing street light pole and incorporating a lighting element is preferred. If no street light poles exist in the area proposed, the new structure shall consist of a fiberglass or metal pole.
 6. A new facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
 7. Facilities must not be illuminated, except in accordance with state or federal regulations or if incorporated as part of a street light pole. If incorporated as part of a street light pole, the new lights shall integrate with the existing street lighting design on file with the Township. Facility owner shall assume all costs of power and maintenance for lights on their facility.
 8. The permit holder must post an identification sign at each facility, including permit holder emergency telephone numbers and wireless service provider emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the Township. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the Township of the change in operation within thirty (30) days and the required and approved signs shall be updated within thirty (30) days to reflect the name and phone number of the new permit holder. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than one square foot in size.
- c. Development Standards. Small Wireless Facilities shall be constructed and/or modified in a manner that:
- i. Minimizes risks to public safety, such as causing any physical or visual obstruction to pedestrian, bicycle or vehicular traffic, creating safety hazards to pedestrians, cyclists, and/or motorists;
 - ii. Ensures that placement of facilities on existing structures is within the tolerance of those structures;
 - iii. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

- iv. Ensures that the Township bears no risk or liability as a result of the installations; and
- v. Ensures that applicant's use does not interfere with the primary uses of the right-of-way, or hinder the ability of the Township or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(3). Standard of Care. Any Small Wireless Facility 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, and National Electrical Code, as the same have been adopted by the Township. Any Small Wireless Facility 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 any person or any property in the Township.

(4). Removal. In the event that use of a Small Wireless 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. Unused or abandoned Small Wireless Facility or portions of a Small Wireless Facility shall be removed as follows:

- a. All abandoned or unused Small Wireless Facilities and accessory facilities shall be removed within sixty (60) days of the cessation of operations at the site unless a time extension is approved by the Township.
- b. If the Small Wireless Facility or accessory facility is not removed within sixty (60) days of the cessation of operations at a site, or within any longer period approved by the Township, the Small Wireless Facility and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the Small Wireless Facility.

(5). Relocation. Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its Small Wireless Facilities in the right-of-way whenever the Township request such removal and relocation as provided below. The Township may only make such a request to prevent the Small Wireless Facility from interfering with a present or future Township use of the right-of-way; a public improvement undertaken by the Township; an economic development project in which the Township has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder. In the event of a relocation under this paragraph, Township may waive any fees relating to an application for a replacement location and may take

such other actions to assist the permit holder to relocate the facility as the Township deems necessary.

(6). Restoration. In the event that a permit holder removes or is required to remove a Small Wireless Facility from the right-of-way under this Chapter (or relocated pursuant to Section E above), the permit holder must restore the right-of-way to its prior condition in accordance with the Township specifications. However, a structure owned by another entity authorize to maintain that support structure in the right-of-way need not be removed by must instead be restored to its prior condition. If permit holder fails to make the restoration required by this Section, the Township at its option may do such work. In that event, the permit holder shall pay the Township within 30 days of billing therefor, the cost of restoring the right-of-way.

(7). Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small Wireless Facility in the ROW is subject to the Township's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township. The permit holder of each Small Wireless Facility shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above. The Township shall by resolution establish the annual fees to be assessed for use and occupancy of the ROW. In addition, the FCC's presumptively valid fee limits set forth that recurring fees shall be \$270.00 for each Small Wireless Facility.

(8). Reservation of police powers. The Township, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable federal, state and local laws and regulations.

SECTION 4. Modification. The Board of Supervisors reserves the right to modify, supplement, or amend the Agreement from time to time by resolution or ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person(s) or circumstances is for any reason held to be invalid or unconstitutional by any court, such holding(s) shall not be construed to affect the validity of any of the remaining provisions of the Ordinance. It is hereby declared the legislative intent that this Ordinance would have been adopted had such invalid or unconstitutional provision or its application not be included herein.

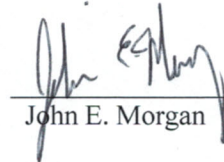
SECTION 6. Repealer. Any other Ordinance or parts thereof inconsistent with this Ordinance shall be and are hereby expressly repealed.

SECTION 7. Effective Date. This Ordinance shall be effective five (5) days after adoption of the Ordinance by the Board of Supervisors.

BE IT ENACTED this 10TH day of MARCH, 2020.

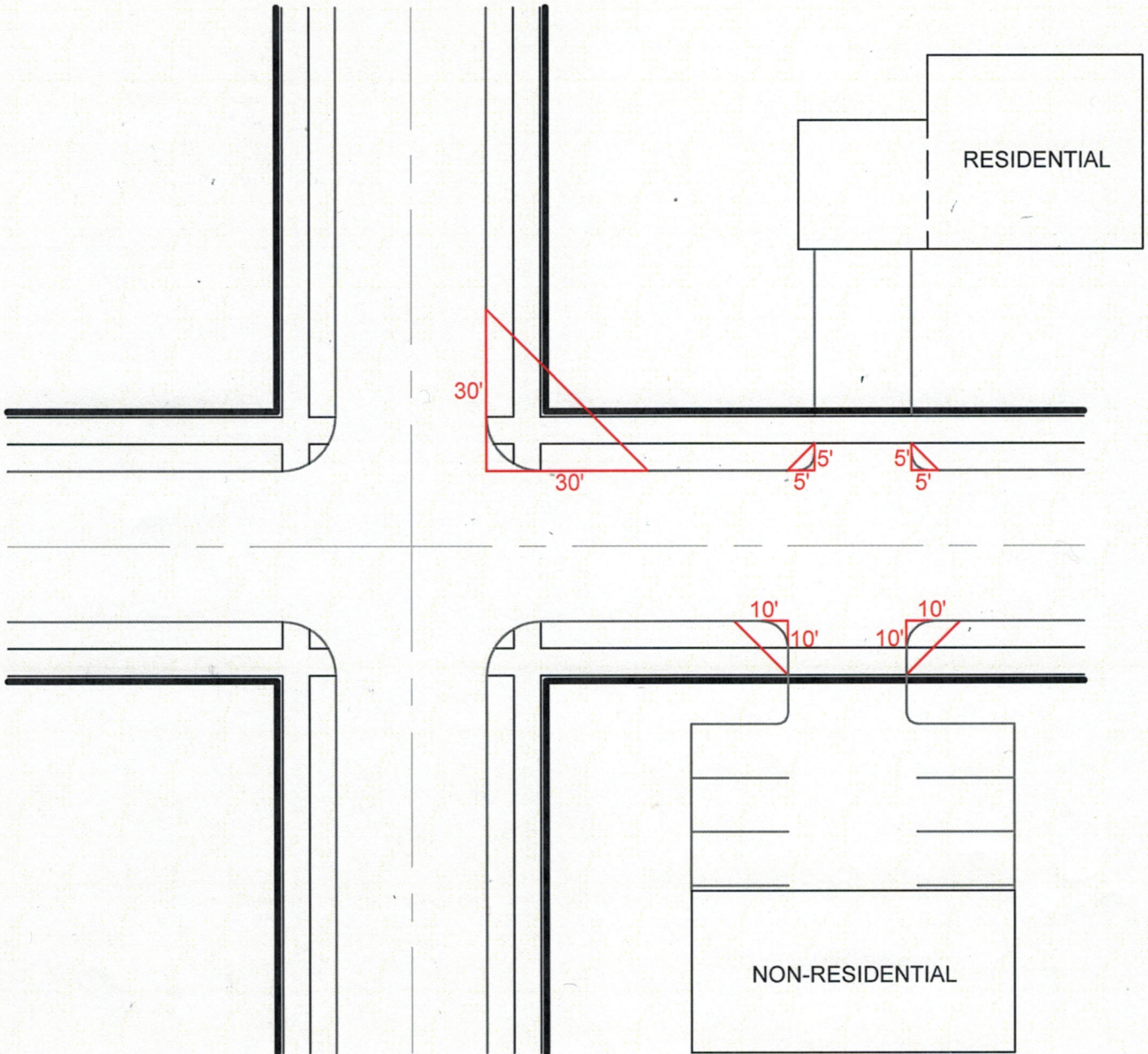
MILLCREEK TOWNSHIP SUPERVISORS


James S. Bock


John E. Morgan


Daniel P. Ouellet

APPENDIX A



DO NOT LOCATE FACILITIES
IN CLEAR SIGHT TRIANGLES AT
DRIVEWAYS. FACILITIES IN 30'
TRIANGLE AT INTERSECTIONS
MUST FOLLOW REGULATIONS
IN SECTION 145-76.1 C (2) b. i. 2b.

SMALL CELL SIGHT-LINE TRIANGLES