

CHARTER TOWNSHIP OF WATERFORD

ORDINANCE NO. 2019-003

WIRELESS FACILITIES IN RIGHT-OF-WAY ORDINANCE

An Ordinance to amend the Waterford Charter Township Code to provide an additional exemption from the Disruption Permit requirement and to add a new Article in Chapter 14.5, to establish requirements, standards, and regulations for access to and use of public right-of-way for wireless facilities and provide penalties for violations of the added Article

THE CHARTER TOWNSHIP OF WATERFORD ORDAINS:

Section 1 of Ordinance

That Section 14.5-011(b) of the Waterford Charter Township Code is amended by adding a new subsection (6) to read as follows:

Sec. 14.5-011. - Disruption permit required.

(a) and (c) [Unchanged.]

(b) Exceptions and emergencies. A disruption permit is not required for:

(1) - (5) [Unchanged.]

(6) Disruptions that comply with the terms and conditions of this Chapter and any applicable Telecommunications or Use Permit issued under this Chapter for which the Road Commission of Oakland County (RCOC) or Michigan Department of Transportation (MDOT) has issued a construction permit, copies of which have been filed with the Township. Such a construction permit issued by RCOC or MDOT shall satisfy the disruption permit requirement under Section 14.5-034 for telecommunication facilities.

Section 2 of Ordinance

The Waterford Charter Township Code (Code) is amended by adding a new Article IX, Wireless Facilities in Right-of-Way, in Chapter 14.5, Right of Way Management, to read as follows:

ARTICLE VIII. - WIRELESS FACILITIES IN RIGHT-OF-WAY

Sec. 14.5-101. - Purpose.

This Article is adopted in response to new and differing State and Federal regulations, including Michigan Public Act No. 365 of 2018 (MCL 460.1301 - 460.1339), 47 USC 1455, Rules adopted by the Federal Communications Commission (FCC) as 47 CFR 1.40001 (now 47 CFR 1.6100) and 47 CFR 1.6001 - 1.6003, and the FCC's Declaratory Ruling and Third Report and Order in FCC 18-133, that infringe on the Township's constitutional and proprietary rights and interests in its public right-of-way and the reasonable control thereof under Article VII, Section 29 of the Michigan Constitution of 1963, the Charter Township Act, and other applicable laws, which would allow the Township to require public right-of-way users to obtain a franchise or license from the Township. Without waiving those

Township rights, this Article is adopted for the purpose of complying with those State and Federal regulations by providing for and regulating access to and ongoing use of public rights-of-way for wireless facilities that are not considered to be telecommunications facilities covered by the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act"), and permits applied for and issued under that Act and Article IV of this Chapter.

Sec. 14.5-102. - Definitions.

As used in this Article, the following words and phrases shall have the indicated meanings:

Applicant means a wireless provider that applies for a permit or approval for wireless facilities, a wireless support structure, or utility pole in a public right-of-way.

Collocation or collocate means to place, replace, modify, mount, or install wireless facilities on or adjacent to a wireless support structure or utility pole, but does not include make-ready work or the installation of a new wireless support structure or utility pole.

Eligible facilities request means a request for modification of a lawfully existing wireless tower or lawfully existing wireless base station in a public right-of-way that involves collocation, removal, or replacement of wireless facilities that will not substantially change the physical dimensions of the wireless tower or based station support structure, with wireless tower, wireless base station, and substantial change defined in Section 14.5-110.

Micro wireless facility means a small wireless that is not more than 24 inches in length, 15 inches in width, and 12 inches in height that does not have an exterior antenna more than 11 inches in length.

Public right-of-way means the area on, above, or below a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses, whether owned or controlled by, or under the jurisdiction of, the Township or county, state, or federal government but does not include a private right-of-way, limited access highway, land owned or controlled by a railroad, and railroad infrastructure.

Small wireless facility means a wireless facility that meets each of the following requirements:

(a) Each antenna is enclosed or would fit within an enclosure of not more than 6 cubic feet in volume.

(b) All other wireless facilities associated with all antennas at a single location are not more than 28 cubic feet in volume, with electric meters, telecommunications demarcation boxes, grounding equipment, power transfer and cut-off switches, vertical cable runs, and concealment elements required by the Township excluded from that calculation.

Utility pole means a pole or similar structure other than a wireless support structure, that is or may be fully or partially used for cable or wireline communications, electric distribution, lighting, traffic control, signage if the pole is at least 15 feet in height above ground level, or a similar function, or that is designed to support small wireless facilities.

Wireless facility or facilities means equipment and components at a fixed location that enable or facilitate the provision of wireless services, including antennas, transmitters, receivers,

coaxial or fiber-optic cable, equipment shelters or cabinets, power supplies, comparable equipment, and miscellaneous hardware, but excluding structures or improvements on, under, or within which the equipment is collocated, telecommunication facilities as defined in Article IV, and a wireline backhaul facility.

Wireless provider means a person or entity that provides wireless services and a person or entity that builds wireless facilities or support structures for a disclosed provider of wireless services.

Wireless service means a wireless communication service that is permitted or authorized by the Federal Communications Commission, which includes but is broader than personal wireless services as defined in 47 USC 332.

Wireless service provider means a person or entity that provides wireless services.

Wireless support structure means a freestanding structure designed to support or capable of supporting small wireless facilities but does not include a utility pole.

Sec. 14.5-103. - Required permits and approvals to be applied for and complied with.

(a) Wireless facilities, wireless support structures, and utility poles shall not be installed, used, operated, or maintained in a public right-of-way without complying with the applicable regulations in this Article and first obtaining and thereafter complying with the terms and conditions of all of the following permits or approvals:

(1) A Use Permit to be applied for, reviewed, and issued or denied under Articles III and V of this Chapter and the requirements, standards, and regulations in this Article. Section 14.5-021(c) that requires Township Board approval, Section 14.5-024 that limits the term, and Section 14.5-058(a) regarding the time allowed for permit decisions, and any other provisions in Articles III or V that conflict with this Article shall not apply to the Use Permit.

(2) Required building, electrical, and other construction code permits from the Township Building Official to be applied for, reviewed, and issued or denied under Article III in Chapter 4 of the Code.

(3) Any approvals or permits required, to be applied for, reviewed, and issued or denied under the Township Zoning Ordinance.

(b) A permit or approval shall not be required, and fees or rates shall not be payable for:

(1) Replacement of a small wireless facility with a small wireless facility that is not larger or heavier and complies with applicable codes.

(2) Routine maintenance of small wireless facilities, wireless support structures, or utility poles.

(3) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

(c) Any construction code and Zoning Ordinance permits or approvals for wireless facilities, wireless support structures, or utility poles shall be conditioned on the issuance of and compliance with the Use Permit and conditions of that Permit.

(d) The time period for the Township to act on a wireless provider permit or approval application for wireless facilities, support structures, or utility poles under this Article shall not commence until the Township has complete applications for all of the required Township Permits listed in subsection (a).

(e) In addition to Township permits and approvals, any required permits from other governmental entities that also have an ownership, control, or jurisdictional interest in the public right-of-way (Road Commission of Oakland County or RCOT and Michigan Department of Transportation or MDOT) must be obtained prior to construction, and thereafter complied with. Obtaining a permit for wireless facilities, wireless support structures, or utility poles from another governmental entity who shares the public right-of-way with the Township does not relieve a wireless provider from the need to comply with the standards in this Article and the Township reserves the right to require that a Use Permit under this Article be applied for, obtained, and complied with.

(f) To the extent applicable and allowed under existing franchises, permits, and applicable law, the permit requirements under this Article shall apply to all new installations in the public right-of-way by electric and gas public utilities, incumbent or competitive local exchange carriers, fiber providers, and cable television video services providers.

Sec. 14.5-104. - Types of wireless facilities and applicable standards.

(a) The following types of wireless facilities, support structures, and utility poles in the public right-of-way are addressed and subject to the application, review, and other standards and regulations in the indicated Section of this Article:

(1) Section 14.5-108 for collocation of a small wireless facility on an existing wireless support structure or utility pole.

(2) Section 14.5-109 for collocation of a small wireless facility on a new or replacement wireless support structure or utility pole.

(3) Section 14.5-110 for eligible facilities requests.

(4) Section 14.5-111 for collocation of wireless facilities other than small wireless facilities and eligible facilities requests.

(5) Section 14.5-112 for replacement and new wireless support structures or utility poles not involving small wireless facilities or eligible facilities requests.

(b) An application for a permit or approval required under this Article shall conspicuously identify the type of wireless facilities proposed and the ordinance Section(s) listed in subsection (a) that the applicant believes to be applicable.

Sec. 14.5-105. - Applications for Right-of-Way Use Permits.

(a) Applications for Use Permits for proposed wireless facilities, wireless support structures, and utility poles under this Article shall be as provided in Articles III and V of this Chapter, with the construction plans and construction and schedule information listed in Sections 14.5-055 and 14.5-056 as being for disruption permits required for the Use Permit application. The Use Permit application shall include:

(1) By reference to those listed in Section 14.5-104(a), a conspicuous identification of the type of wireless facilities proposed and applicable ordinance Section.

(2) Documentation of the date when complete applications for construction code permits and any required Zoning Ordinance permits or approvals were or will be made.

(3) Copies of all applications, plans, and other documents submitted to the Road Commission of Oakland County (RCOC) and Michigan Department of Transportation (MDOT) for a construction permit or documentation of the date when those submittals will be made and with an agreement to provide the Township with the required copies at that time.

(b) The construction plans and application information under Sections 14.5-053, 14.5-054, 14.5-055, 14.5-056 in Article V shall include the following:

(1) Information necessary to demonstrate compliance with the applicable standards for the type of wireless facilities, support structure, or utility poles for which approval is requested under Sections 14.5-108 through 14.5-112.

(2) Information necessary to demonstrate compliance with the public, utility, and traffic safety and protection standards in Section 14.5-106.

(3) Information necessary to demonstrate compliance with the aesthetic, spacing, and undergrounding standards in Section 14.5-107.

(4) Manufacturer, model number, height, width, depth, weight, and volume in cubic feet of all proposed wireless facilities individually and collectively, specifically including the total cubic feet of each antenna and the total cubic feet of all other wireless facilities.

(5) Certified documentation that each proposed wireless support structure or utility pole can structurally accommodate the proposed wireless facilities and documentation of any ability to accommodate any future wireless facilities.

(6) Underground improvements and above ground improvements, structures, and landscaping (as described in Section 14.5-055) within 75 feet of the proposed location.

(7) Geographic information system (GIS) coordinates for the proposed location.

(8) Photos of existing conditions and photo simulations of proposed conditions.

(9) A certificate of compliance with FCC rules related to radio frequency emissions from the proposed wireless facilities.

(10) A written certification by the applicant that the wireless facilities for which the permit is requested will be operational within one (1) year after permit issuance.

(11) The information required for applicants in Section 14.5-053(d) for the owners of and wireless providers that will use the proposed wireless facilities, wireless support structures, and utility poles.

(12) Documentation of the applicant's ability to provide any required bond under Section 14.5-115.

(13) Payment of any application, review, or processing fee established by resolution of the Township Board under Section 14.5-116.

(14) For applications that would involve exceeding the height limits under Public Act No. 365 of 2018, to the height limits allowed by 47 CFR 16.001 - 16.003, a statement of whether the applicant agrees to payment of the annual recurring fees recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133.

(c) An application may be for up to 20 collocations by the applicant of substantially similar small wireless facilities for placement on similar types of wireless support structures or utility poles.

Sec. 14.5-106. - Public, utility, traffic, and pedestrian safety protection standards.

(a) Wireless facilities, wireless support structures, utility poles, and any related equipment shall be designed, installed, used, and maintained in compliance with the following standards that are intended to avoid material interference with the safe operation of traffic equipment, sight lines and clear vision areas, Americans with Disabilities Act (ADA) compliance regarding pedestrian access or movement, and the maintenance and full unobstructed use of public utility and drainage infrastructure:

(1) Shall have a separation distance of at least five (5') feet from a sidewalk and the back of a curb, or if there is no curb, from the edge of the improved public right-of-way used for motor vehicle travel.

(2) Shall have a separation distance of at least five (5') feet from the edge of any driveway and not be positioned to obstruct the ability to view traffic on the road from a vehicle exiting a driveway.

(3) Shall be located outside the corner clearance area under the Zoning Ordinance and comply with any other traffic safety clear vision standard under any Township or other governmental ordinance, code, standard, rule, or regulation.

(4) Shall not cause a physical or visual obstruction or safety hazard to pedestrian or vehicular traffic.

(5) Shall comply with any setback, separation, or isolation distance requirement from existing or planned public utilities and lawful structures in the public right-of-way under any Township ordinance, code, or design standards.

(6) The lowest part of wireless facilities shall be located at a height that is at least ten (10') feet above existing grade or higher as necessary to not pose a hazard or obstruction to persons or vehicles and to provide sufficient separation distance from power lines and similar facilities.

(7) Wireless support structures and utility poles shall not have more collocated wireless facilities than the structure or pole is designed and constructed to safely accommodate as documented by a certified structural analysis.

(8) Construction and traffic control during construction shall be in accordance with the Michigan Manual of Uniform Traffic Control Devices, Michigan Vehicle Code, and the directives of the Township public safety department.

(9) Shall not interfere or prevent compliance with Americans with Disabilities Act standards regarding pedestrian access and movement.

(10) Shall comply with all conditions of any required permits from other governmental entities.

(b) To provide compliance with one or more of the standards in subsection (a), the Township may require that a proposed collocation involving a new or replacement utility pole be moved by up to 75 feet for collocation on a designated existing wireless support structure or utility pole or to a designated location for the new or replacement utility pole. The applicant may request a waiver of this requirement by demonstrating in writing that the applicant cannot secure the right to comply with the Township's requirement on reasonable terms and conditions and that compliance imposes unreasonable technical problems or significant additional costs.

(c) An applicant may request a waiver or modification of one or more of the standards in subsection (a) by demonstrating in writing that compliance will prevent a disclosed wireless service provider that would be using the proposed wireless facilities, support structure, or utility pole, from providing personal wireless services in violation of 47 USC 332.

Sec. 14.5-107. - Aesthetic, spacing, and undergrounding standards.

(a) Wireless facilities, wireless support structures, utility poles, and any related equipment shall be designed, installed, used, and maintained in compliance with the following standards that are intended to conceal such facilities, structures, and poles to the extent technically feasible in an effort to avoid or remedy the tangible and intangible public harm of installations in the public right-of-way that are unsightly, out-of-character with the surrounding area, or could result in the direct or indirect removal of trees and other aesthetically desirable features and appearances:

(1) Shall be strictly limited to the location and what is shown on the approved plans.

(2) Wireless facilities shall be treated and colored to be visually compatible with the wireless support structure or utility pole they are collocated on or associated with by painting or other coating. For existing wood utility poles, a finish color of conduit that is zinc, aluminum, or stainless steel is considered visually compatible.

(3) Wireless facilities shall be compatible in scale and proportion to the structure or pole upon which they are to be attached, using the smallest and least intrusive

technology available, with the diameter of top mounted antennas to not exceed twice the diameter of the top of the structure or pole.

(4) Antennas shall be top mounted and aligned with the centerline of wireless support structures or utility poles, or side mounted with the vertical centerline of the antenna parallel with the support structure or utility pole.

(5) All cables and wires shall be placed in conduit or otherwise properly secured and concealed on the wireless support structure or utility pole.

(6) No more than three (3) antennas may be collocated on a utility pole and only if that number of antennas can be designed and accommodated in a manner that complies with all requirements of this Section.

(7) Existing trees in the public right-of-way shall not be removed or trimmed to facilitate the installation, use, or maintenance of wireless facilities.

(8) Wireless facilities, support structures, and utility poles shall not be located within the drip line (critical root zone) of an existing tree in or adjoining the public right-of-way.

(9) Ground mounted wireless facilities, including equipment cabinets and enclosures, shall be located as close as legal and technically feasible to the wireless support structure or utility pole they are associated with.

(10) Ground mounted wireless facilities, including equipment cabinets and enclosures, shall be concealed to the extent technically feasible by matching color and materials to existing above-ground structures, landscaping, and placement to take advantage of concealment provided by the proposed structure or pole, existing landscaping, or above-ground improvements.

(11) Wireless facilities shall not project more than two (2') feet from any side of the utility pole or wireless support structure upon which they are collocated.

(12) Wireless facilities shall not be illuminated unless required by law or integral to a concealment design such as appearance as or on a street light pole.

(13) New and replacement utility poles shall be located in alignment with existing utility poles on either side.

(14) New and replacement utility poles shall be located equidistance from existing utility poles on either side.

(15) New and replacement utility poles shall be made of the same material and have the same visual appearance as the existing utility poles on either side. If those existing utility poles are different, the new or replacement pole shall be metal or fiber if either existing pole is of that material and shall otherwise be the same material as the newer of the existing poles.

(16) Unless a greater height is approved under this Article as required by state or federal law, wireless support structures and utility poles shall not be taller than the existing utility poles on either side.

(17) In a public right-of-way abutting residentially used or zoned property, new wireless facilities, wireless support structures, and utility poles shall only be located in line with a side lot line.

(18) New wireless facilities shall not be collocated on an existing wireless support structure or utility pole that is directly in front of an existing residential dwelling or that is along the frontage of a property containing a building of historic significance under federal, state, or other laws.

(19) New wireless facilities, wireless support structures, and utility poles shall not be located in front of an existing residential or commercial structure.

(20) In a public right-of-way abutting residentially used or zoned property, wireless facilities that require a cooling system shall use a passive system, or if a motorized system is technologically required, shall use a system and fan with the lowest available noise level.

(21) Except for a label containing the name and emergency contact telephone number for the wireless provider responsible for the wireless facilities and wireless support structure or utility pole, information that identifies them and their location, and any information required to be displayed by state or federal law, no signage shall be allowed, with all manufacturer decals that are not needed for safety reasons to be removed or painted over.

(22) Regardless of the number of antennas that are collocated on a utility pole or wireless support structure, the other wireless facilities associated with those antennas shall not exceed 28 cubic feet in volume.

(23) Collocations on and replacement or new utility poles or wireless support structures in a public right-of-way that has been specifically designated or identified by ordinance or Township Board resolution for a program of improvement, redevelopment, beautification, regulation, or other planning goals, shall be subject to Township review and approval of the design, appearance, and method and height of attachment to assure consistency, compatibility, and uniformity with the standards, objectives, installations and streetscape appearance planned for that public right-of-way under the program.

(b) To provide compliance with one or more of the standards in subsection (a), the Township may require that a proposed collocation involving a new or replacement utility pole be moved by up to 75 feet for collocation on a designated existing wireless support structure or utility pole or to a designated location for the new or replacement utility pole. The applicant may request a waiver of this requirement by demonstrating in writing that the applicant cannot secure the right to comply with the Township's requirement on reasonable terms and conditions and that compliance imposes unreasonable technical problems or significant additional costs.

(c) Above ground wireless facilities and support structures and utility poles shall not be allowed in an area designated by the Township Board solely for underground or buried cable and utility facilities if all of the following apply:

(1) The Township has required all cable and utility facilities, other than Township, street light, and traffic signal poles and attachments, to be placed underground by a date that is not less than 90 days before the submission of the application.

(2) The Township does not prohibit the replacement of Township poles by a wireless provider in the designated area.

(d) An applicant may request a waiver or modification of one or more of the standards in subsections (a) and (c) by demonstrating in writing that compliance will prevent a disclosed wireless service provider that would be using the proposed wireless facilities, support structure, or utility pole, from providing personal wireless services in violation of 47 USC 332.

(e) To the extent applicable and allowed under existing franchises, permits, and applicable law, the permit requirements under this Article shall apply to all new installations in the public right-of-way by electric and gas public utilities, incumbent or competitive local exchange carriers, fiber providers, and cable television video services providers.

Sec. 14.5-108. - Collocation of small wireless facilities on existing structures and poles.

(a) This Section applies to the collocation of small wireless facilities on existing wireless support structures or utility poles.

(b) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole they are collocated on.

(c) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to compliance with subsection (b), the collocation shall not result in a height that exceeds the greater of the following overall heights of the structure or pole and collocated wireless facilities:

(1) 50 feet.

(2) A height that is 10% more than the height of the existing structure or pole.

(3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(d) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this Article, the Township shall approve or deny an application for a permit under this Section within 60 days of all applications for the requested facilities being submitted and complete.

(e) A permit application under this Section may only be denied for reasons listed in Section 14.5-113(b).

Sec. 14.5-109. - Collocation of small wireless facilities on replacement/new structures and poles.

(a) This Section applies to the collocation of small wireless facilities on new or replacement wireless support structures or utility poles.

(b) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole and the new or replacement wireless support structure or utility pole used for collocation shall not exceed 40 feet in height above ground level.

(c) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, the collocation shall not result in a height that exceeds the greater of the following overall heights of the new or replacement structure or pole and collocated wireless facilities:

(1) 50 feet.

(2) For a replacement structure or pole, a height that is 10% more than the height of the structure or pole being replaced.

(3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(d) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this Article, the Township shall approve or deny an application for a permit under this Section within 90 days of all applications for the requested facilities being submitted and complete.

(e) A permit application under this Section may only be denied for reasons listed in Section 14.5-113(b).

Sec. 14.5-110. - Eligible facilities requests.

(a) This Section applies to eligible facilities requests as defined in Section 14.5-102.

(b) For purposes of this Section:

(1) Wireless tower means a structure in a public right-of-way, the sole or primary purpose of which is to support antennas and associated wireless equipment for the provision of wireless services.

(2) Wireless base station means equipment or a structure (other than a wireless tower), that at the time of the application, supports or houses wireless facilities at a fixed location that enables wireless service between user equipment and a communications network.

(c) An eligible facilities request application shall include the documents, plans, specifications, and statements necessary to establish that:

(1) The wireless tower or base station is existing.

(2) The wireless tower or base station to be modified is in compliance with all applicable prior Township, state, and other local zoning, siting, and regulatory reviews, permits, and approvals.

- (3) Modification is limited to collocation, removal or replacement of wireless equipment.
 - (4) There will be no "substantial change" to the wireless tower or base station.
- (d) For purposes of this Section substantial change means any of the following:
- (1) Increasing the height over the height approved as of February 22, 2012, by more than 10% or more than 10 feet, whichever is greater.
 - (2) Adding wireless facilities that would protrude from the edge of the structure by more than six (6) feet.
 - (3) The installation of new ground equipment cabinets if there are no pre-existing ground cabinets.
 - (4) If there are existing ground equipment cabinets, the installation of ground cabinets that are 10% larger in height or overall volume than the existing cabinets.
 - (5) Excavation or deployment outside the perimeter of the area occupied by the wireless tower or base station and existing wireless facilities.
 - (6) A modification that does not comply with prior approval conditions for the wireless support structure or base station unless the noncompliance is limited to a modification that would not be a substantial change under the above standards in subsections (1) through (5)
 - (7) A modification that would defeat or be incompatible or inconsistent with existing elements of a wireless tower or base station designed to conceal or minimize its appearance as a wireless tower or base station.
- (e) Subject to the possible time adjustments under 47 CFR 1.6100 that is included in the Shot Clock Appendix to this Article, the Township shall approve or deny an application for a permit under this Section within 60 days of all applications for the requested facilities being submitted and complete.

Sec. 14.5-111. - Collocation of wireless facilities other than small wireless facilities and eligible facilities requests.

- (a) This Section applies to the collocation of wireless facilities that are not described in Sections 14.5-108, 14.5-109, or 14.5-110.
- (b) Collocations shall comply with all standards in Sections 14.5-106 and 14.5-107.
- (c) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole they are collocated on.
- (d) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to compliance with

subsection (c) and the applicant's demonstration that a disclosed wireless provider will be prohibited from providing personal wireless services without the increased height, the collocation shall not result in a height that exceeds the greater of the following overall heights of the structure or pole and collocated wireless facilities:

- (1) 50 feet.
- (2) A height that is 10% more than the height of the existing structure or pole.
- (3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(e) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this Article, the Township shall approve or deny an application for a permit under this Section within 90 days of all applications for the requested facilities being submitted and complete.

Sec. 14.5-112. - Replacement and new wireless support structures and utility poles not involving small wireless facilities or eligible facilities requests.

(a) This Section applies to the new and replacement wireless support structures and utility poles not involving collocation of wireless facilities under Sections 14.5-108, 14.5-109, or 14.5-110.

(b) Wireless support structures and utility poles shall comply with all standards in Sections 14.5-106 and 14.5-107.

(c) For wireless support structures and utility poles where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, the height shall not exceed 40 feet above ground level and wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole.

(d) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to the applicant's demonstration that a disclosed wireless provider will be prohibited from providing personal wireless services without a height greater than in subsection (c), the wireless support structure or utility pole may be increased to a height that does not exceed the greater of the following overall heights of the structure or pole and collocated wireless facilities:

- (1) 50 feet.
- (2) A height that is 10% more than the height of the existing structure or pole.
- (3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(e) For new and replacement wireless support structures and utility poles under this Section, the Township may specify and require relocation from what is proposed to a new location in the same general public right-of-way area based on any standard listed in Sections 14.5-106 and 14.5-107, or permit condition listed in Section 14.5-114.

(f) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this Article, the Township shall approve or deny an application for a permit under this Section within 150 days of all applications for the requested facilities being submitted and complete.

Sec. 14.5-113. - Review and decisions on use permit applications.

(a) Within the time allowed for approval or denial of a permit application, the Township shall issue a written notice to the applicant that either denies the requested permit for specified reasons with citations to applicable Sections of this Chapter or other codes, or provides notice that the application has been approved and the requirements for the permit to be issued.

(b) An application under Sections 14.5-108 or 14.5-109 for wireless facilities, support structures, or utility poles described in and complying with those Sections may only be denied if the facilities, structures, or poles would do one or more of the following:

(1) Materially interfere with the safe operation of traffic control equipment.

(2) Materially interfere with sight lines or clear zones for transportation or pedestrians.

(3) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.

(4) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of the Township.

(5) With respect to drainage infrastructure under the jurisdiction of the Township or other governmental entity, either of the following:

A. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.

B. Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.

(6) Fail to comply with the one or more spacing standards in Sections 14.5-106 or 14.5-107 that do not prevent a wireless provider from serving any location.

(7) Fail to comply with applicable codes.

(8) Fail to comply with the aesthetic, spacing, or undergrounding standards in Section 14.5-107 in a historic, downtown, or residential district unless such compliance is demonstrated by the applicant to prohibit use of the wireless service provider's technology.

(9) Fail to meet the aesthetic, spacing, or undergrounding standards in Section 14.5-107 unless such compliance is demonstrated by the applicant to prohibit the provision of personal wireless services.

(c) If an application is denied, the applicant may attempt to cure the reasons for denial by submitting a revised application with amended or supplemental information within 30 days of the denial without payment of an additional application fee. The Township shall approve or deny the revised application within 30 days, limiting its review to the reasons for denial, and provide notice of that decision as provided in subsection (a).

(d) Before issuance of a permit, any bond required by Section 14.5-115 shall be provided and the annual fee established by Resolution of the Township Board for the approved wireless facilities under Section 14.5-116 shall be paid.

Sec. 14.5-114. - Permit terms and conditions.

In addition to the permit terms and conditions in Article VI of this Chapter, every Use Permit issued under this Article shall be considered to include the following conditions, with these conditions to control in the event of any conflict or inconsistency with those in Article VI. Compliance with permit conditions is required, with a violation of permit conditions being a violation of this Article.

(a) Repair. All wireless providers using the wireless facilities, support structures, or utility poles are responsible for repairing all damage to the public right-of-way caused by the activities of one or more of those providers while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing wireless facilities, wireless support structures, or utility poles, and to restore the public right-of-way to the condition that existed prior to the damage. If the wireless providers fail to perform the repairs and restoration within 60 days of the Township's written notice to do so, the Township may perform the repairs and restoration, with the wireless providers responsible for paying the Township its reasonable and documented costs within 30 days of the Township's invoice or billing for those costs.

(b) Electricity. All wireless providers using the wireless facilities, support structures, or utility poles shall be responsible for arranging and paying for all electricity used for the wireless facilities.

(c) Indemnification. All wireless providers using the wireless facilities, support structures, or utility poles shall defend, indemnify, and hold harmless the Township and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, wireless providers using the facilities, structures, or poles, and their contractors, subcontractors, and the officers, employees, or agents of any of these. This obligation does not apply to any liabilities or losses due to or caused by the sole negligence of the Township or its officers, agents, or employees.

(d) Insurance. All wireless providers using the wireless facilities, support structures, or utility poles obtain insurance naming the Township and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees in amounts required by the Township. A wireless provider may meet all or a portion of the Township's insurance coverage and limit requirements by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this Section. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the Township evidence demonstrating, to the Township's satisfaction,

the wireless provider's financial ability to meet the Township's insurance coverage and limit requirements.

(e) Marking. Permittee shall mark the Wireless facilities, structures, and poles in compliance with applicable federal and state law requirements, with each location at which Wireless facilities, structures, and poles are located to have a written sign that is readable from ground level that at a minimum states Permittee's name and a toll-free telephone number to call for assistance, and if Wireless facilities, structures, and poles are underground, a statement that there is buried equipment at the site.

(f) Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with any Township programs or projects Permittee was notified of in the Township's review comments on disruption permit application.

(g) Underground Relocation. If Permittee has its wireless facilities on poles of a utility or telecommunications provider and such utility or telecommunications provider relocates its system underground, this Permit shall terminate as to any such pole that is no longer used except by Permittee for its wireless facilities. Permittee shall remove any such pole described in this subsection at its cost and expense within a reasonable time period specified by the Township in a written notice. If Permittee fails to satisfy this obligation, Township may take all reasonable actions it deems necessary to secure timely completion of the required work.

Sec. 14.5-115. - Bond.

A bond may be required to be posted prior to issuance of a Use Permit under this Article in an amount not exceeding \$1,000.00 for each wireless facility at a location to provide for removal of abandoned or improperly maintained facilities, repair and restore the public right-of-way, and recoup rates or fees that have not been paid within 12 months of when they were due. The Township may not require the bond to be cash unless the wireless provider has failed to obtain or maintain a required bond in a form other than cash or the surety has defaulted or failed to perform on a bond given on behalf of the wireless provider.

Sec. 14.5-116. - Fees.

Application, review, inspection, and recurring annual rates or fees shall be payable to the Township in amounts established by Township Board resolution.

Sec. 14.5-117. Shot Clock Appendix.

The attached Shot Clock Appendix containing MCL 460.1315, 47 CFR 1.6003, and 47 CFR 1.40001 is part of this Article.

Sec. 14.5-118. - Construction Permits.

(a) A copy of every RCOC or MDOT issued construction permit for work in a public right-of-way for which a Use Permit under this Article has been applied for, approved, or issued shall be filed with the Township within three (3) days of issuance.

(b) Work in a public right-of-way authorized by a construction permit issued by RCOC or MDOT shall not be commenced or performed until all Township permits and approvals required under this Article have been issued.

Sec. 14.5-119. - Township Administration and Enforcement.

(a) Upon the Ordinance that added this Article taking effect, the Township shall provide RCOC and MDOT with copies of Sections 14.5-106 and 14.5-107 with a request that those public, utility, traffic and pedestrian safety protection standards and aesthetic, spacing, and undergrounding standards be applied in the review and decision on construction permit applications.

(b) Upon receiving and reviewing an application for a Use Permit under this Article, the Township shall provide written notice of any noncompliance with Sections 14.5-105, 14.5-106, or 14.5-107 to RCOC for a county road and to MDOT for a state highway with a request that any construction permit applied for be withheld until or conditioned on cure of the noncompliance.

(c) The Township reserves the right to notify and request enforcement by RCOC or MDOT of violations of the terms and conditions of construction permits issued by them.

Sec. 14.5-120. - Violations.

A violation of any Section in this Article or permit condition shall be a municipal civil infraction. Nothing in this Section shall be construed to limit the remedies available to the Township under a permit or otherwise by law for such violations.

Section 3 of Ordinance

Should any Section, subdivision, sentence, clause or phrase of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part as invalidated.

Section 4 of Ordinance

This Ordinance shall take effect immediately upon publication.

CERTIFICATION

I certify that this Ordinance was adopted by the Board of Trustees of the Charter Township of Waterford at a regular meeting held on April 8, 2019

CHARTER TOWNSHIP OF WATERFORD

Date

By: _____
Kimberly F. Markee, Township Clerk

Introduced: March 25, 2019

Adopted: April 8, 2019

Published: April 9, 2019

SHOT CLOCK APPENDIX TO WIRELESS FACILITIES IN RIGHT-OF-WAY ORDINANCE

As provided in Section 14.5-117, this Shot Clock Appendix is a part of Article VIII, Wireless Facilities in Right-of-Way, in Chapter 14.5, Right-of-Way Management, of the Waterford Charter Township Code, and contains the state statute and federal regulations referred to in Sections 14.5-108, 14.5-109, 14.5-110, 14.5-111, and 14.5-112 of that Code. "Shot Clock" is a reference to a time deadline established by law for action on a permit request.

SHOT CLOCK PROVISIONS FROM MCL 460.1315.

[Subsections (2)(a)-(c), (f), (g), and (i)-(o), and (3) - (8) are not shot clock provisions and are omitted.]

- (1) This section applies to activities of a wireless provider within the public right-of-way.
- (2) Except as otherwise provided in subsection (5), an authority may require a permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be colocated if the permit is of general applicability. The processing of an application for such a permit is subject to all of the following:
 - (d) Within 25 days after receiving an application, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under subdivision (h).
 - (e) The running of time period tolled under subdivision (d) resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission is inadequate, the authority shall notify the applicant in writing not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision (d). Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (h) The authority shall approve or deny the application and notify the applicant in writing within the following period of time after the application is received:
 - (i) For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:
 - (A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
 - (B) Add 15 days if, before the otherwise applicable 60-day or 75-day time period under this subparagraph elapses, the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.
 - (ii) For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) [Ordinance Section 14.5-109] and associated small cell facility, 90 days, subject to the following adjustments:

(A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

(B) Add 15 days if, before the otherwise applicable 90-day or 105-day time period under this subparagraph elapses, the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.

If the authority fails to comply with this subdivision, the completed application is considered to be approved subject to the condition that the applicant provide the authority not less than 7 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

47 CFR 1.6003 REASONABLE PERIODS OF TIME TO ACT ON SITING APPLICATIONS.

(a) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) Shot clock period. The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) Presumptively reasonable periods of time—

(1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) Batching.

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

SHOT CLOCK PROVISIONS FROM 47 CFR 1.6100

[Subsections (a) and (b) are not shot clock provisions and are omitted.]

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.