

## **ARTICLE 25(A)**

### **SMALL CELL WIRELESS COMMUNICATIONS FACILITIES**

Eff. 10-7-2019

#### **Section 25A.01 Purpose**

Consistent with the requirements of the Small Wireless Communications Facilities Deployment Act, Public Act No. 365 of 2018, and in anticipation of a continued increased demand for placement of small wireless facilities of the type regulated by the Act both within the public rights-of-way and in other locations within the jurisdiction of the Township, the Township Board has found it to be in the best interests of the public health, safety, and general welfare of the Township to adopt the amendments set forth in this Article in order to establish generally applicable standards for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small cell wireless facilities both within the public rights-of-way and in other locations within the Township so as to, among other things:

- A. Prevent interference with the facilities and operations of the Township's electric utility and other Township utilities, and of other utilities lawfully located both within public rights-of-way and in other locations within the jurisdiction of the Township;
- B. Preserve the character of the neighborhoods in which such small cell wireless facilities are installed;
- C. Minimize any adverse visual impact of small cell wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed;
- D. Ensure the continued safe use and enjoyment of private properties adjacent to small cell wireless facilities;

- E. Provide appropriate aesthetic protections to any designated historic landmarks or districts within the Township; and
- F. Ensure that the placement of small cell wireless facilities does not negatively impact public safety and the Township's public safety technology.

#### **Section 25A.02 Interaction with Other Code Provisions and Laws**

- A. *Other Code Provisions.* The provisions of this Ordinance are intended to supplement general requirements and standards relative to the siting of telecommunication facilities and generally applicable requirements for construction within public rights-of-way set forth elsewhere within the Allendale Charter Township Zoning Ordinance (the "ACTZO"), including but not limited to the regulations set forth in Article 25 (Wireless Communications Towers and Antennas). In the event of a conflict, however, the provisions of this Ordinance shall control in all matters involving small cell wireless facilities, as defined below.
- B. *State and Federal Laws.* In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, a wireless provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating such federal or State laws or regulations.

**Section 25A.03 Definitions**

As used in this Article and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in the Small Wireless Communications Facilities Deployment Act (Public Act 365 of 2018), unless the context clearly requires otherwise.

- A. *Act*: The Small Wireless Communications Facilities Deployment Act, Public Act No. 365 of 2018.
- B. *Antenna*: Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- C. *Applicable codes*: Uniform building, fire, electrical, plumbing, or mechanical codes adopted under the Stille-DeRosset-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, or adopted by the United States Occupational Safety and Health Administration or by a state or national code organization, including, but not limited to, the “National Electrical Safety Code” published by the Institute of Electrical and Electronics Engineers.
- D. *Applicant*: A wireless provider that submits an application described in this Article.
- E. *Attaching entity*: A public or private party or entity, other than a municipally owned electric utility, that, pursuant to an agreement with the municipally owned electric utility, places a wire or cable attachment on a nonauthority pole or related infrastructure within the communication space. Attaching includes, but is not limited to, both of the following:
  - 1. A telecommunication provider as that term is defined in section 102 of the

- metropolitan extension  
telecommunications rights-of-way  
oversight act, 2002 PA 48, MCL 484.3102.
- 2. A video service provider as that term is defined in the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.
- F. *Authority*: Allendale Charter Township, or any subdivision thereof, authorized to make legislative, quasi-judicial, or administrative decisions concerning an application of the Act.
- G. *Colocate or Colocation*: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. Colocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.
- H. *Communications facility*: The set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.
- I. *Communications service*: Service provided over a communications facility, including cable service as defined in 47 U.S.C. 153, information service as defined in 47 U.S.C. 153, telecommunications service as defined in 47 U.S.C. 153, or wireless service.
- J. *Communications service provider*: Any entity that provides communications services.
- K. *FCC*: The Federal Communications Commission.
- L. *Fee*: A nonrecurring charge for services.
- M. *Historic district*: A historic district established under section 3 of the local historic districts act, 1970 PA 169, MCL 399.203, or a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register,

the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, appendix C.

N. *Law*: Federal, state, or local law, including common law, a statute, a rule, a regulation, an order, or an ordinance.

O. *Micro wireless facility*: A small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

P. *Municipally owned electric utility*: A system owned by a municipality or combination of municipalities to furnish power or light and includes a cooperative electric utility that, on or after the effective date of this act, acquired all or substantially all of the assets of a municipal electric utility, when applying this act to the former territory of the municipal electric utility.

Q. *Nonauthority pole*: A utility pole used for electric delivery service and controlled by the governing body of a Township-owned electric utility.

R. *Public right-of-way ("ROW")*: The area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

1. A private right-of-way.
2. A limited access highway.
3. Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.
4. Railroad infrastructure.

S. *Rate*: A recurring charge.

T. *Small cell wireless facility*: A wireless facility that meets both of the following requirements:

1. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
2. All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

U. *Utility pole*: A pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements of the Act and is designed to support small cell wireless facilities. Sign poles less than 15 feet in height above ground are excluded.

V. *Wireless facility*: Equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless

facility. Wireless facility does not include any of the following:

1. The structure or improvements on, under, or within which the equipment is collocated.
2. A wireline backhaul facility.
3. Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

**W. Wireless infrastructure provider:** Any person, including a person authorized to provide telecommunications services in this state but not including a wireless services provider, that builds or installs wireless communications transmission equipment, wireless facilities, or wireless support structures, and who, when filing an application with the Township, provides written authorization to perform the work on behalf of a wireless services provider.

**X. Wireless provider:** A wireless infrastructure provider or a wireless service provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the Michigan Public Service Commission.

**Y. Wireless services:** Any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

**Z. Wireless services provider:** A person that provides wireless services.

**AA. Wireless support structure:** A freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

### **Section 25A.04 Permitted Use; General Requirements**

- A. *Permitted use.* A wireless provider may, as a permitted use not subject to zoning review or approval, colocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the public right-of-way. Applications for permits to colocate small cell wireless facilities on said property shall still be subject to administrative review, as set forth in this Article and, if applicable, approval of any request for height exceptions or other variances.
- B. *Permit required.* No small cell wireless facility shall collocate on a utility pole or similar structure or other wireless support structure without first filing an application with the Township and obtaining one or more permits, except as otherwise provided in this Article.

### **Section 25A.05 Permit Application Process**

- A. *Submission of permit applications.* All applications for permits pursuant to this Article shall be made on a form provided by the Township and filed with the Township in such number of duplicate copies as the Township may require. Applicants shall submit applications, the supporting information, and notices to the Township Supervisor, or his or her designee, by personal deliver, or by other means approved by the Township.
- B. *Attestation.* All applications for permits pursuant to this Article shall include an attestation by the wireless services provider that, if the application is approved, the small cell wireless facilities will be operational for

use by the wireless services provider within 1 year after the permit issuance date.

C. *Completeness of applications.* Within twenty-five (25) days of receiving an application, the Township will determine whether the application is complete and notify the applicant of the status of the application. If the application is incomplete, the Township shall specifically identify the missing documents or information.

D. *Tolling of time.* Processing deadlines for approval or denial of applications are tolled from the time the Township sends a notice of incompleteness to the time that the applicant submits the missing information. If the applicant's supplemental submission is inadequate, the Township will notify the applicant in writing within ten (10) days after receipt of the supplemental submission and delineate the missing documents or information. It is within the Township's discretion as to whether the processing deadline for approving or denying the application will be tolled in the case of second or subsequent notices of incompleteness.

E. *Consolidated applications.* Consolidated applications for small cell wireless facilities for the colocation of up to twenty (20) small cell wireless shall be allowed, provided that the small cell wireless facilities within a consolidated application consist of substantially similar equipment and will be placed on similar types of utility poles or wireless support structures. Each consolidated application shall provide all the information required by this Article for each small cell wireless facilities at each location. If such an application includes incomplete information for one or more small cell wireless facility colocations, or includes requests for small cell wireless facilities that do not qualify for

consolidated treatment, or that are otherwise denied, the Township may remove such colocation requests from the application and treat them as separate requests. Separate permits may be issued for each colocation approved in a consolidated application.

F. *Permit application fees.* All applications for permits pursuant to this Article shall be accompanied by the following non-refundable applicable permit application fees:

1. \$200.00 for an application to colocate a single small cell wireless facility on an existing utility pole or wireless support structure within a Township right-of-way;
2. \$200.00 for each small cell wireless facility addressed in a consolidated application to colocate more than one small cell wireless facility on existing utility poles or wireless support structures; or
3. \$300.00 for each small cell wireless facility addressed in an application that includes the installation of a new utility pole or wireless support structure for such colocation.

G. *Applicant's duty to update information.* Throughout the entire permit application review period and the construction period authorized by the permit, any amendments and/or revisions to information contained in the permit application shall be submitted by the applicant in writing to the Township Supervisor within thirty (30) days after the change necessitating the amendment and/or revision.

H. *Exceptions.* No application, permit approval, fees, or rates shall be required from a communications service provider authorized to occupy the right-of-way when the work in question is for:

1. The replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes;
2. Routine maintenance of a small cell wireless facility, utility pole, or wireless support structure; or
3. The installation, placement, maintenance, operation or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable safety codes.

The foregoing shall not preclude the Township from requiring a permit for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic within the right-of-way, as determined by the Township.

### **Section 25A.06 Action on Permit Applications**

#### *A. Township review of permit applications.*

Completed permit applications, containing all of the required documentation, shall be reviewed by the designated Township official.

#### *B. Timeline for approval or denial of permit application.* An application for a permit under this Ordinance shall be processed on a nondiscriminatory basis and either approved or denied, in writing, subject to the following timelines:

1. Sixty (60) days after the submission of an application to colocate a small cell wireless facility on an existing utility pole, subject to the following adjustments:
  - i. Such 60-day deadline shall be extended to seventy-five (75) days if an application from another wireless

provider was received within 1 week of the application in question.

- ii. 15 additional days shall be added to the subject time period if, before the otherwise applicable 60-day or 75-day time period elapses, the Township notifies the applicant in writing that an extension is needed and the reasons for such extension.
2. Ninety (90) days after the submission of an application to colocate a small cell wireless facility that includes the installation of a new utility pole or a replacement of a utility pole that meets the height requirements of this Article, subject to the following adjustments:
  - i. Such 90-day deadline shall be extended to one hundred and five (105) days if an application from another wireless provider was received within 1 week of the application in question.
  - ii. 15 additional days shall be added to the subject time period if, before the otherwise applicable 90-day or 105-day time period elapses, the Township notifies the applicant in writing that an extension is needed and the reasons for such extension.
  - iii. If the Township does not approve or deny the completed application within the otherwise applicable 90-day or 105-day time period, the application shall be deemed approved.
    - a. If the applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant must notify the Township of its intention to invoke the deemed approved

remedy with at least seven (7) days' advance written notice that the applicant will be proceeding with the work pursuant to such automatic approval.

C. *Reasons for denial.* The Township shall deny a completed application for a proposed colocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements of this Article only if the proposed activity would do any 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 and regulations regarding pedestrian access or movement;
4. Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of any authority;
5. Materially interfere with maintenance or full unobstructed use of drainage infrastructure under the jurisdiction of any authority as it was originally designed;
6. Failure to locate the facility a reasonable distance from the drainage infrastructure to ensure maintenance under the drain codes and access to the drainage infrastructure;
7. Failure to comply with reasonable, nondiscriminatory spacing or ground-mounting equipment requirements under the ACTZO;
8. Failure to comply with applicable codes;
9. Failure to comply with underground or buried cable and utility facilities requirements; or
10. Failure to comply with applicable design, stealth, and concealment standards.

D. *Notice of denial.* The reasons for any denial of a permit shall be provided in a written notice of denial sent to the applicant, and shall include the specific code provisions or application conditions on which the denial is based.

E. *Resubmittal after denial; opportunity to cure.* In the case of a permit denial, an applicant may cure the deficiencies identified in the notice of denial and resubmit a revised application once within thirty (30) days after the notice of denial is sent without payment of an additional application fee. The Township shall approve or deny the revised application within thirty (30) days of receipt of the applicant's revised application.

1. Any review of the revised application is limited to the deficiencies cited by the Township in its denial of the original application.
2. The revised application procedure shall not apply if the cure for the deficiencies set forth in the denial requires the review of a new location, new or different structure to be colocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

#### Section 25A.07 Effect of Permit

A. *Authority granted; no property right or other interest.* A permit from the Township authorizes a permittee to undertake only certain activities in accordance with this Article and does not create a property right or

grant authority to the permittee to impinge upon the rights of others who may have an interest in the public rights-of-way.

B. *Compliance with all laws required.* The issuance of a permit by the Township does not excuse the permittee from complying with other requirements of the Township and all applicable statutes, laws, ordinances, rules and regulations.

C. The approval of the installation, placement, maintenance, or operation of a small cell wireless facility pursuant to this Article does not authorize the installation, placement, maintenance, or operation of any communications facilities other than small cell wireless facilities in the right-of-way.

### **Section 25A.08 Colocation Requirements and Conditions**

A. *Non-interference with public safety communication frequencies.*

1. A wireless provider's operation of a small wireless facility may not interfere with the frequencies used by a public safety agency for public safety communications.
2. A wireless provider must install small cell wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.
3. Unacceptable interference is determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licenses by a public safety agency.
4. If a small cell wireless facility causes such interference, and the wireless provider has been given written notice of the

interference by the public safety agency, the wireless provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small cell wireless facility and later powering up the small cell wireless facility for intermittent testing, if necessary. The Township may terminate a permit for a small cell wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC, including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

5. The burden to establish the good faith effort shall be on the wireless provider, which shall timely deliver to the Township all information necessary to demonstrate its efforts to resolve the interference consistent with the Code of Federal Regulations sections cited above. Failure to remedy the interference as required herein shall constitute a public nuisance and the small cell wireless facility may be abated through the procedures for abatement of such nuisances set forth in this code.

B. *Public safety concerns.* The wireless provider shall comply with all applicable federal, state and local codes, code provisions, and regulations concerning public safety. The proposed colocation cannot materially interfere with any of the conditions set forth in this Article. Additionally, for the safety of electrical utility workers and members of the

public, the small cell wireless facility shall comply with the following:

1. Small cell wireless facilities collocated on the same Township pole as a street light shall be on the same disconnect as the street light.
2. Small cell wireless facilities shall be grounded and otherwise fully comply with all applicable electrical codes.
3. Whenever conduit of small cell wireless facilities crosses telephone or electric power wires, wires shall be crossed and be maintained in accordance with the National Electric Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this Article, and as amended from time to time.

C. *Third-party concerns.* The wireless provider shall comply with requirements that are imposed in a contract between the Township and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in a right-of-way.

D. *Non-interference with electric distribution/transmission system.*

1. The wireless provider shall not colocate small cell wireless facilities on Township utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole, including the tops of electric transmission or distribution poles.
2. Notwithstanding the above, the antenna and support equipment of the small cell

wireless facility may be located in the communications space on the Township utility pole and on the top of the pole (other than on top of electric transmission or distribution poles), if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving top of the pole.

For purposes of this subsection, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code, published by the Institute of Electrical and Electronics Engineers.

E. *Stealth, concealment, and design standards.* Every small cell wireless facility installation shall comply with the following standards:

1. *General stealth, concealment, and design standards.* Installations shall comply with any stealth, concealment, design and aesthetic standards applicable for decorative utility poles, stealth structures, concealment and aesthetic requirements set forth in a Township ordinance, written policy, comprehensive plan, or other written design that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district. Small cell wireless facilities shall not be colocated on any public art or statue within the Township.
2. *Historic districts and landmarks.* For areas designated as historic districts, or on buildings or structures designated as historic landmarks pursuant to the Township Code, in addition to the stealth, concealment and design requirements referenced above, the following additional

restrictions/conditions apply to the installation of small cell wireless facilities:

- i. Small cell wireless facilities shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with any buildings or structures designated as historic landmarks or located within a designated historic district, and shall be designed to blend with the surrounding historical landmarks and/or district in design and color.
- ii. Small cell wireless facilities shall not be mounted upon any designated historic landmark unless completely concealed using stealth and concealment measures, approved by the Township.

3. *Historic district and landmark limitations.*

- i. Any stealth, concealment, and design standards in a historic district or on a historic landmark, including restrictions on a specific category of utility poles, may not have the effect of prohibiting any wireless provider's technology. Such stealth, concealment, and design measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility.
- ii. This subsection shall not be construed to limit the Township's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Michigan State Historic Preservation Plan, or the National Historic Preservation Act of 1966, 54 U.S.C.

Section 300101 *et seq.*, and the regulations adopted to implement those laws.

- F. *Signage requirements.* The wireless provider shall comply with sign regulations applicable to public rights-of-way as otherwise set forth in the ACTZO.
- G. *Labeling requirements.* The wireless provider shall label all small cell wireless facilities with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.
- H. *Ground-mounted equipment spacing requirements.* The wireless provider shall comply with all applicable spacing requirements for construction of utility facilities within the public right-of-way as otherwise set forth in the ACTZO.
- I. *Undergrounding requirements.* The wireless provider shall comply with the ACTZO provisions or regulations concerning undergrounding requirements, if any, that prohibit the installation of new or the modification of existing utility poles or equipment in the right-of-way. Any request by a wireless provider for a variance to install such new utility poles or modify existing utility poles shall be subject to the procedures set forth in the ACTZO regarding variances.
  1. *Waiver from undergrounding requirements.* A wireless provider may receive a waiver from the Township to allow small cell wireless facilities to be located above ground in an area where Township ordinances or regulations prohibit or restrict ground facilities if the wireless provider can establish that:
    - i. Underground equipment is not technically feasible and there is no

reasonable alternative or location that is more aesthetically favorable to adjacent property owners and to effective use and management of the right-of-way;

- ii. An above ground small cell wireless facility at the proposed location is necessary at the proposed location to provide coverage in a specified area;
- iii. An above ground small cell wireless facility at the proposed location will not disrupt traffic or pedestrian circulation or constitute a safety hazard;
- iv. An above ground small cell wireless facility at the proposed locations will not interfere with public safety uses or frequencies;
- v. Space exists within the public right-of-way to accommodate the above ground small cell wireless facility at the proposed location;
- vi. An above ground small cell wireless facility at the proposed location will not create a safety hazard;
- vii. The above ground small cell wireless facility is located and designed in such a way so as to minimize its visual impact on adjacent properties; and
- viii. In any historical area, that the above ground small wireless facility will not detrimentally affect the historical nature of the area.

2. *Future undergrounding.* The Township may, from time to time, make a decision to eliminate above-ground utility poles of a particular type generally, such as electric utility poles, in all or a significant portion of the Township. In the event that such a utility pole has a colocated small cell

wireless facility in place at the time of such a decision, the Township shall either;

- i. Continue to maintain the utility pole, or install and maintain a reasonable utility pole or wireless support structure for the colocation of the small cell wireless facility or offer some other reasonable alternative that allows the small cell wireless provider to maintain service at that location; or
- ii. Offer to sell the utility pole to the wireless provider at a reasonable cost, or allow the wireless provider to install its own utility pole so it can maintain service from that location.

J. *Alternate placements.*

- 1. *Existing utility poles.* Except as provided in this Article, a wireless provider shall not be required to colocate small cell wireless facilities on an existing specific utility pole or category of existing utility poles or be required to colocate multiple antenna systems on a single existing pole.
- 2. *New utility poles.*
  - i. For an application for the colocation of a small wireless facility on a new utility pole, the Township may propose an alternate location within the right-of-way or on property or structures owned or controlled by the Township within seventy-five (75) feet of the proposed location to either place the new utility pole or colocate on an existing structure.
  - ii. The applicant shall accept the proposed alternate location as long as it has the right to use the location on reasonable terms and conditions and the alternate location does not impose

unreasonable technical limits or significant additional costs, as determined by the applicant.

iii. If the applicant refuses an alternate location based on the foregoing, the applicant shall provide legally competent evidence in the form of a written certification, under oath, describing the property rights, technical limits or material cost reasons that prevent the alternate location from being utilized.

**K. Height limitations.**

1. *Small cell wireless facilities.* The maximum permitted height of a small cell wireless facility installed or modified in the public right-of-way is five (5) feet above the utility pole or wireless support structure on which the small wireless facility is colocated.
2. *New or replacement utility poles or wireless support structures.* The height for new or replacement utility poles or wireless support structures on which small cell wireless facilities are colocated may not exceed forty (40) feet above ground level, unless a taller height is agreed to by the Township.
3. *Height exceptions/variances.* If an applicant proposes a height for a new or replacement utility pole or wireless support structure in excess of the height limitations set forth above, the applicant may request a variance for the height limitation pursuant to the procedures set forth in the ACTZO.

**L. Colocation completion deadline.** Colocations for which permits are approved shall be completed within one (1) year of issuance of the permit, unless the Township and the applicant agree to extend this period or a delay

is caused by the lack of commercial power or communications facilities at the site. Permits that are not completed within applicable timelines shall be void, absent an extension granted in writing by the Township, and the applicant may reapply for a permit.

**M. Construction, maintenance, and safety standards.** A wireless provider shall install, maintain, repair and modify its small cell wireless facilities within the Township in a safe condition that maintains the safety, integrity and aesthetics of such facilities. Small cell wireless facilities shall not appear to be unkempt. Specifically, the wireless provider shall comply with the following requirements and conditions:

1. The wireless provider shall maintain its small cell wireless facilities in a manner consistent with accepted industry practice and applicable law.
2. The wireless provider shall follow all safety practices required by applicable law or accepted industry practices or standards during the construction, installation, or maintenance of small cell wireless facilities.
3. The wireless provider shall use and exercise due caution, care and skill in performing work in the public right-of-way and shall take all necessary and reasonable steps to safeguard work site areas. The persons constructing, installing, and maintaining small cell wireless facilities must be a licensed electrician, certified to work as a lineworker, or successfully complete an accredited lineworker apprenticeship program.
4. A wireless provider shall not place or maintain its small cell wireless facilities so as to interfere with, displace, damage or destroy any utilities, including, but not

limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Township or any other person's facilities lawfully occupying the Township's public rights-of-way.

N. *Restoration after construction.* After the completion of any placement or maintenance of a small cell wireless facility in a public right-of-way, the wireless provider shall, at its own expense, restore the public right-of-way to its original condition within ten (10) days of the completion such work, or such longer period of time as may be agreed to between the Township and the wireless provider in writing. Alternatively, the wireless provider and the Township Supervisor may agree, in writing, that the Township will perform the restoration and charge the costs of the restoration against the wireless provider. If the wireless provider fails to make such repairs as requested by the Township within 60 days after written notice, the Township may make those repairs and charge the wireless provider the reasonable, documented cost of the repairs.

O. *Right to inspection; failure to maintain.* The Township shall have the right to make such inspections of small cell wireless facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Article. In the event of a failure to properly maintain such facilities, the Township shall notify the wireless provider, in writing, who shall have thirty (30) days to correct the identified maintenance violation. If not corrected within such period, the Township reserves the right to take such action as it deems necessary, including revocation of the permit. Maintenance and replacement of small cell wireless facilities shall be performed by the wireless provider at the wireless provider's sole cost and expense.

P. *Abandonment.* A small cell wireless facility that is not operated for a continuous period of twelve (12) months, or for which rates or fees have not been paid by the wireless provider in the preceding twelve (12) months, shall be considered abandoned. The owner of the facility shall remove the small cell wireless facility within ninety (90) days after receipt of written notice from the Township notifying the wireless provider of the abandonment. The notice shall be sent by certified or registered mail, return receipt requested, by the Township to the owner at its last known address. If the small cell wireless facility is not removed within ninety (90) days after receipt of such notice, such wireless facility shall be deemed to be a nuisance and the Township may remove or cause the removal of such facility, and recover or place a lien for its costs, pursuant to the terms of its pole attachment or other agreement for Township utility poles or through the procedures for abatement of nuisances set forth in the ACTZO. The Township shall charge the cost of the removal against the wireless provider or any successor in interest to the wireless provider.

Q. *Emergency removal or relocation.* The Township retains the right and privilege to cut or move any small cell wireless facilities within the rights-of-way of the Township, as the Township may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the circumstances permit, the Township shall attempt to notify the wireless provider prior to cutting or removing the facility and shall notify the wireless provider after cutting or removing the facility.

R. *Coverages and limits.* Under this Article, the Township is not required to install or maintain

any specific utility pole or to continue to install or maintain any specific utility pole in any location if the Township determines to eliminate above-ground utility poles or a particular type generally, such as electric utility poles, in all or a significant portion of its geographic jurisdiction. If the Township determines to eliminate above-ground Township utility poles of a particular type generally, and colocated small wireless facilities are in place, the Township shall either:

1. Continue to maintain the utility pole or install and maintain a reasonable alternative utility pole or wireless support structure for the colocation of the small cell wireless facility; or
2. Offer to sell the utility pole to the wireless provider at a reasonable cost or allow the wireless provider to install its own utility pole so it can maintain service from that location.

#### **Section 25A.09 Annual Recurring Rate/Rental Fee**

A. *Annual rate.* The wireless provider shall pay the Township an annual recurring rate for each utility pole or wireless support structure located in a Township right-of-way on which the wireless provider has colocated a small cell wireless facility the higher of:

1. \$20.00 annually for each utility pole or wireless support structure; or
2. \$125.00 annually, if the utility pole or wireless support structure was erected by or on behalf of the wireless provider on or after March, 2019.

B. *Payment of annual rate.* This fee shall be payable on the first annual anniversary of the

issuance of the permit or notice of intent to colocate, and on each annual anniversary date thereafter.

- C. *Increases to the annual rate.* The annual rates set forth in this Article shall be increased by 10% every five years from March 12, 2019.
- D. *Exception.* Small cell wireless facilities colocated on Township-owned utility poles located outside of public right-of-way are not subject to the rate limitations in this section.

#### **Section 25A.10 Permit Duration**

Permits issued for small cell wireless facilities pursuant to this Article shall be valid for a period of five (5) years. Every 5 years after the effective date of this Act, the maximum application fees prescribed herein shall be increased by 10% and rounded to the nearest dollar.

#### **Section 25A.11 Permit Revocation**

- A. *Township right to revoke permit.* The Township may, upon thirty (30) days' written notice, revoke a permit issued pursuant to this Article if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of this Article.
- B. *Notice of revocation.* The Township shall send written notice of its intent to revoke a permit issued pursuant to this Article stating the reason or reasons for the revocation and the alternatives available to permittee. Such notice of the permit revocation shall be sent by certified mail or shall be personally delivered to the wireless provider setting forth the basis for the revocation.
- C. *Opportunity to cure.* A permittee shall have an opportunity to cure any deficiencies cited by the Township in its written notice of forthcoming revocation. Curing of such

deficiencies shall occur within fourteen (14) days of receipt of the notice of revocation.

D. *Township correction and notice.* If the deficiency creates an imminent threat to life, health, or safety, the Township may correct the deficiency immediately upon verbal notice by the Township to permittee.

E. *Stop work order.* In addition to the issuance of a notice of revocation, the Township may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within this Article.

F. *Failure or refusal of the permittee to comply.* If the permittee fails or gives notice of refusal to cure such deficiencies, the Township may, in its sole discretion:

1. Correct the deficiencies;
2. Upon not less than twenty (20) days' notice to the permittee, remove the subject facilities or equipment; or
3. After not less than thirty (30) days' notice to the permittee of the failure to cure the non-compliance, deem them abandoned and property of the Township.

The permittee shall be liable in all events to the Township for all costs.

### **Section 25A.12 Zoning; General Requirements**

A. *Permitted use exemption from zoning requirement.* Small cell wireless facilities shall be classified as permitted uses and shall not be subject to zoning review and approval, provided that they are colocated on an existing utility pole or a new utility pole constructed within a Township right-of-way and otherwise meet the requirements of this Article.

B. *General zoning requirements.* Except as otherwise provided in this Article, zoning review and approval shall be required for the

placement of small cell wireless facilities within the Township right-of-way and subject to the zoning approval process in this Article and the ACTZO. In the event of a conflict, however, the provisions of this Article shall control in all matters involving small cell wireless facilities, as defined herein. The following activities are not classified as a permitted use and are subject to zoning review and approval:

1. The modification of existing or installation of new small cell wireless facilities.
2. The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

### **Section 25A.13 Zoning Approval Process**

A. *Submission of zoning approval applications.* Activities which are not otherwise exempt from the zoning requirement shall submit applications for zoning approval on a form provided by the Township and filed with the Township in such number of duplicate copies as the Township may require. Applicants shall submit applications, the supporting information, and notices to the Township Supervisor by personal delivery, or by other means approved by the Township.

B. *Completeness of applications.* Within thirty (30) days of receiving an application, the Township will determine whether the application is complete and notify the applicant of the status of the application. If the application is incomplete, the Township shall specifically identify the missing documents or information.

C. *Tolling of time.* Processing deadlines for approval or denial of applications are tolled from the time the Township sends a notice of incompleteness to the time the applicant

submits the missing information. If the applicant's supplemental submission is inadequate, the Township will notify the applicant in writing within ten (10) days after receipt of the supplemental submission and delineate the missing documents or information. It is within the Township's discretion as to whether the processing deadline for approving or denying the application will be tolled in the case of second or subsequent notices of incompleteness.

**D. Zoning approval application fees.** All applications for zoning approval pursuant to this Article shall be accompanied by the following non-refundable application fees:

1. \$1,000.00 for an application for a new wireless support structure or modification of an existing wireless support structure.
2. \$500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

**E. Timeline for approval or denial of application for zoning approval.** An application for zoning approval under this Article shall be processed on a nondiscriminatory and either approved or denied, in writing, subject to the following timelines:

1. Ninety (90) days after an application is received for modification of a wireless support structure or installation of a small cell wireless facility. If the Township does not approve or deny the completed application within said 90 days, the application shall be deemed approved.
2. One hundred and fifty (150) days after an application is received for a new wireless support structure. If the Township does not approve or deny the completed application within said 150 days, the application shall be deemed approved.

3. The time period for approval may be extended by mutual agreement between the applicant and authority.
4. If the applicant intends to proceed with the permitted activity on a deemed approved basis after the otherwise applicable 90-day or 150-day time period elapses, the applicant must notify the Township of its intention to invoke the deemed approved remedy with at least fifteen (15) days' advance written notice that the applicant will be proceeding with the work pursuant to such automatic approval.

**F. Reasons for denial.** The Township will not deny an otherwise properly completed application for zoning approval unless all of the following conditions are met:

1. The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously;
2. There is a reasonable basis for the denial; and
3. The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

**G. Construction following zoning approval.** The construction for the modification of existing or installation of new small cell wireless facilities, or new wireless support structures used for such small cell wireless facilities, for which zoning approval is granted, shall be commenced within one (1) year of issuance of zoning approval, unless the Township and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications at the site. If a wireless provider fails to commence such construction within one (1) year, the zoning approval shall be void, and the wireless provider may reapply for zoning approval.

H. *Township right to revoke zoning approval.* The Township may, upon thirty (30) days' written notice, revoke a zoning approval issued pursuant to this Article if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

#### **Section 25A.14 Dispute Resolution**

The Circuit Court of Ottawa County, Michigan shall have exclusive jurisdiction to resolve all disputes arising under the Act. Pending resolution of a dispute concerning rates for colocation of small cell wireless facilities on Township utility poles within the right-of-way, the Township shall allow the colocating person to colocate on its poles at annual rates of no more than \$200 per facility, per year, per pole, with rates to be determined upon final resolution of the dispute.

#### **Section 25A.15 Indemnification**

Other than for liabilities and losses due to or caused by the sole negligence of the Township or its employees or agents, a wireless provider shall defend, indemnify and hold harmless the Township, and its officers, agents, and employees, against all claims, demands, damages, lawsuits, judgements, 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 wireless provider, its contractors, its subcontractors, or any officers, employees or agents of such.

#### **Section 25A.16 Insurance**

A. *Coverages and limits.* At all times during the period in which a wireless provider's facilities are located on Township infrastructure, improvements, or otherwise within a Township right-of-way, the wireless provider shall, at its own sole cost and expense, carry the following insurance coverages:

1. Property insurance for its property's replacement cost against all risks;
2. Workers' Compensation insurance within statutory limits as required by law; and
3. Commercial general liability insurance with respect to its activities on the Township infrastructure, improvements or rights-of-way, including coverage for bodily injury and property damage, with limits not less than:
  - i. Five million dollars for bodily injury or death to each person;
  - ii. Five million dollars for property damage resulting from any one accident; and
  - iii. Five million dollars for all other types of liability.

B. *Additional insured and copies.* The wireless provider shall include the Township as an additional insured on the commercial general liability policy and shall provide certificates of insurance and proof of inclusion of the Township in a commercial general liability policy to the Township Supervisor prior to the colocation of any small cell wireless facility, and shall keep updated certificates and proof of inclusion on file with the Township at all times that the provider maintains small cell wireless facilities within the Township.

C. *Self-insurance.* A wireless provider may self-insure all or a portion of the insurance

coverage and limits required by the Township. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement that the Township be named an additional insured. A wireless provider that self-insures shall provide to the Township evidence sufficient to demonstrate its financial ability to self-insure the insurance limits required by the Township.

D. *Effect of insurance and self-insurance on wireless provider's liability.* The legal liability of the wireless provider to the Township and any person for any of the matters that are the subject of the insurance policies or insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

### **Section 25A.16 Change of Ownership**

A. *Notification of change.* A wireless provider shall notify the Township not less than thirty (30) days prior to the transfer of ownership or control of any small cell wireless facility in the right-of-way or change the name and contact information of the new wireless provider.

B. *Rights and obligations of new owner.* The new owner of the wireless provider or the small cell wireless facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and all applicable laws, ordinances, rules and regulations, including this Article with respect to the work and facilities in the right-of-way.

C. *Amended permit.* A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be bound by the terms and conditions of the permit and any applicable agreement between the Township

and the prior owner if the new owner uses the small cell wireless facility or allows it to remain on the Township's right-of-way.

D. *Insurance and bonding.* All required insurance, coverage or bonding must be changed to reflect the name of the new owner upon transfer.

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