

ORDINANCE NO. 2021-__

AN ORDINANCE OF THE BOROUGH OF MIFFLINBURG, UNION COUNTY, PENNSYLVANIA, ESTABLISHING PROCEDURES AND REQUIREMENTS PERTAINING TO THE IMPLEMENTATION OF ACT 50 OF 2021 AND REGULATING SMALL WIRELESS FACILITIES TO BE PLACED WITHIN THE PUBLIC RIGHT-OF-WAY.

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania has enacted the Small Wireless Facilities Deployment Act, Act of June 30, 2021, P.L. 232, No. 50 (“Act 50”), with an effective date of August 29, 2021; and

WHEREAS, Act 50 authorizes the Borough of Mifflinburg (the “Borough”) to adopt ordinances that comply with Act 50 and requires that the Borough amend existing ordinances as necessary to comply with Act 50; and

WHEREAS, the Borough has determined it to be in the best interests of the health, safety, and welfare of the residents of the Borough to enact certain provisions related to the regulation of Small Wireless Facilities pursuant to Act 50 and to repeal existing ordinances that are inconsistent with Act 50.

NOW THEREFORE, BE IT ORDAINED AND ENACTED, and it is hereby ordained and enacted by the Council of the Borough of Mifflinburg, Union County, Pennsylvania, as follows:

SECTION 1: REQUIREMENTS.

The Code of the Borough of Mifflinburg is hereby amended by adding a new Chapter 30, entitled “Regulation of Small Wireless Facilities” which shall read as follows:

§ 1-1: Purpose

In the exercise of its police powers and pursuant to the authority granted to the Borough under Act 50, the Borough has jurisdiction to regulate uses of the Right-of-Way. The purpose of this Ordinance is to provide the Borough with a process for managing, and uniform standards for acting upon, requests for the placement of Small Wireless Facilities within the Right-of-Way consistent with the Borough’s obligation to promote the public health, safety, and welfare; to manage the Right-of-Way; and to ensure that the public’s use is not obstructed or disturbed by the use of the Right-of-Way for Small Wireless Facilities. The Borough recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the Borough. The Borough also recognizes its obligation to comply with applicable federal and state laws regarding the placement of wireless telecommunications facilities in the Right-of-Way including, without limitation, the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.*, and Act 50, 53 P.S. §§ 11704.1 – 11704.11. This Ordinance shall be interpreted consistent with those provisions.

§ 1-2: Definitions

For the purposes of this Ordinance, the terms below shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural.

“Accessory Equipment” means any equipment serving or being used in conjunction with a Small Wireless Facility or Wireless Support Structure, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

“Antenna” means telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.

“Applicable Codes” means all applicable federal and state laws, regulations and standards that comply with Act 50. The term shall also include all ordinances, resolutions, or policies of the Borough regulating:

- (1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.
- (2) Local zoning, land use, streets and sidewalks, Right-of-Way and permitting ordinances or other local rules or regulations that comply with Act 50.

“Applicant” means a Communications Service Provider that submits an Application.

“Application” means a formal request, including all required and requested documentation and information, submitted by an Applicant to the Borough for a Wireless Permit.

“Borough” means the Borough of Mifflinburg, Union County, Pennsylvania.

“Borough’s Designee” means the person(s) or entity(s) selected by the Borough as responsible for initial processing of the Application.

“Communications Service Provider” means any of the following:

- (1) A cable operator as defined in section 602(4) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 522(5)).
- (2) A provider of information service as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(24)).
- (3) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(51)).

(4) A Wireless Provider.

“**Collocate**” or “**Collocation**” means to install, mount, maintain, Modify, or replace Small Wireless Facilities on an existing Utility Pole or other Wireless Support Structure.

“**FCC**” means the Federal Communications Commission.

“**Historic District or Building**” means a building that is or a group of buildings, properties or sites that are:

(1) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register.

(2) Determined to be eligible for listing by the Keeper of the National Register of Historic Places who has been delegated the authority by a Federal agency to list properties and determine their eligibility for the National Register of Historic Places in accordance with section VI.D.1.a.i-v of the Nationwide Programmatic Agreement for Review Regarding the Section 106 National Historic Preservation Act Review Process as specified under 47 CFR Pt. 1, App. C (relating to Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process).

(3) Marked as a historical site by the Pennsylvania Historical and Museum Commission pursuant to 37 Pa.C.S. (relating to historical and museums).

(4) Within a historic district created pursuant to the act of June 13, 1961 (P.L. 282, No. 167), entitled “An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts.”

“**Micro Wireless Facility**” means a Small Wireless Facility that:

(1) Does not exceed two cubic feet in volume; and

(2) Has an exterior Antenna no longer than 11 inches.

“**Modification**” or “**Modify**” means the improvement, upgrade or replacement of a Small Wireless Facility or an existing Utility Pole that does not substantially change, as defined in 47 CFR 1.6100(b)(7) (relating to wireless facility modifications), the physical dimension of the Small Wireless Facility or Utility Pole.

“**Municipal Pole**” means a Utility Pole owned, managed, or operated by or on behalf of the Borough.

“**Person**” means a natural person, firm, partnership, company, association, trust, corporation, or other legal entity. The singular shall include the plural, the plural shall include the singular; and the masculine shall include the feminine and the neuter, whatever appropriate.

“**Right-Of-Way**” means the area on, below or above a public roadway, highway, street, sidewalk, alley, utility easement or similar property. The term does not include a Federal interstate highway.

“**Small Wireless Facility**” means the equipment and network components, including Antennas, transmitters, and receivers, used by a Wireless Provider that meet the following qualifications:

- (1) Each Antenna associated with the deployment is no more than three cubic feet in volume.
- (2) The volume of all other equipment associated with the Wireless Facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. Any equipment used solely for the concealment of the Small Wireless Facility shall not be included in the calculation of equipment volume under this paragraph.

“**Technically Feasible**” means that, by virtue of engineering or spectrum usage, the proposed placement for a Small Wireless Facility or its design or site location can be implemented without a material reduction in the functionality of the Small Wireless Facility.

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

“**Wireless Facility**” is defined as follows:

- (1) Equipment at a fixed location that enables wireless service between user equipment and a communications network, including any of the following:
 - (a) Equipment associated with Wireless Services.
 - (b) Radio transceivers, Antennas, coaxial or fiber optic cables, regular and backup power supplies, or comparable equipment, regardless of technological configuration.
- (2) The term includes a Small Wireless Facility.
- (3) The term does not include any of the following:
 - (a) The structure or improvements on, under or within which the equipment is Collocated.

- (b) The coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular Antenna.

“**Wireless Infrastructure Provider**” means a person authorized by the Pennsylvania Public Utility Commission to provide telecommunications service in this Commonwealth that builds or installs wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures but is not a Wireless Services Provider.

“**Wireless Permit**” or “**Permit**” means a permit issued by the Borough pursuant to this Ordinance and authorizing the placement or Modification of a Small Wireless Facility of a design specified in the permit at a particular location within the Right-of-Way, and the placement or Modification of any existing Wireless Support Structure to which the Small Wireless Facility is proposed to be attached.

“**Wireless Permittee**” or “**Permittee**” means the lawful holder of a Wireless Permit.

“**Wireless Provider**” means a Wireless Infrastructure Provider or a Wireless Services Provider.

“**Wireless Services**” means services, whether at a fixed location or mobile, using a licensed or unlicensed spectrum, provided to the public using Wireless Facilities.

“**Wireless Services Provider**” means a person or entity which provides Wireless Services.

“**Wireless Support Structure**” means a freestanding structure, including a Utility Pole, Municipal Pole, or other existing or proposed freestanding structure that could support the placement or installation of a Wireless Facility if approved by the Borough.

§ 1-3: Scope

A. Applicability. Unless otherwise exempted, every Applicant who wishes to place a Small Wireless Facility in the Right-of-Way or modify an existing Small Wireless Facility in the Right-of-Way must obtain a Wireless Permit under this Ordinance.

B. Exempt Facilities. The Borough shall not require an Application for the following unless the work involves excavation, closure of a sidewalk, or closure of a vehicular lane in which case a Permit shall still be required:

- (1) The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles by or for a Communications Service Provider authorized to occupy the Right-of-Way, in compliance with the National Electrical Safety Code. However, a Micro Wireless Facility owner shall comply with all Applicable Codes, and shall provide the Borough with written notice at least ninety (90) days prior to the installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility. While an Application is not required for a Micro Wireless Facility, they shall be subject to all other provisions of this Ordinance.

(2) Routine maintenance or repair work.

(3) The replacement of Small Wireless Facilities with Small Wireless Facilities that are substantially similar or the same size or smaller and still qualify as a Small Wireless Facility.

The exemptions from Applications provided for herein shall not relieve the party performing such work from compliance with the permitting or application requirements that may otherwise apply pursuant to the Applicable Codes of the Borough including, but not limited to, permits for excavation-related work.

§ 1-4: Applications for Small Wireless Facilities

A. Application Process.

(1) Small Wireless Facilities shall be treated as a permitted use in all areas of the Borough, except underground districts as established and designated by the Borough from time-to-time, and shall be reviewed by the Borough for conformity with all Applicable Codes.

(2) Applications for Small Wireless Facilities shall be submitted to the Borough, or, if applicable, the Borough's Designee. All Applicants shall submit both a paper copy and an electronic copy (in a searchable format) of any Application, as well as any amendments or supplements to the Application or responses to requests for information regarding an Application. An Application is not complete until both the paper and electronic copies are received.

(3) A single Applicant seeking to Collocate is permitted to submit a consolidated application for Collocation of up to 20 Small Wireless Facilities. An Applicant, however, may not submit more than one consolidated or 20 single Applications for Collocated Small Wireless Facilities in a 30-day period. If the Borough receives more than one consolidated Application or 20 single Applications within a 45-day period, then the applicable timeframe for processing applications specified in this Ordinance shall be extended by 15 days.

(4) Applications are public records that may be subject to disclosure under the Pennsylvania Right-to-Know Law. The Applicant must designate any portions of the Application materials that it reasonably believes contain proprietary or confidential information by clearly and conspicuously marking each portion of such materials accordingly. If the Borough determines that the information is subject to disclosure, such determination shall be conclusive. If the Borough determines that a right-to-know request asks for proprietary or confidential information regarding a Small Wireless Facility, then the Borough shall notify the relevant Applicant within five (5) days of receiving said request pursuant to the Right-to-Know Law. The Applicant and Borough shall use all reasonable efforts to coordinate a response pursuant to the Right-to-Know Law. If the

Applicant determines that the requested information is considered confidential or proprietary information as defined by the Right-to-Know Law, or that any other exemption applies, then the Applicant shall notify the Borough within five (5) days of it receiving notification from the Borough. If the Applicant requests that the Borough deny a request pursuant to the Right-to-Know Law, then the Applicant shall be required to enter into an agreement with the Borough indemnifying the Borough for any and all legal expenses incurred by the Borough as a result of any challenge to the denial.

(5) Applicant must pay an application fee for each Application or consolidated Application pursuant to a fee schedule adopted by the Borough as amended from time-to-time by resolution or otherwise. Where no such fee schedule has been adopted, Applicant shall pay:

(a) Five hundred (\$500.00) dollars for an Application seeking approval for no more than five Collocated Small Wireless Facilities and \$100 for each Collocated Small Wireless Facility beyond five.

(b) One thousand (\$1,000.00) dollars for an Application seeking approval of a Small Wireless Facility that requires the installation of a new or replacement Utility Pole.

Application fees are non-refundable and will not be returned to the Applicant even where Applicant chooses not to proceed with construction or installation of the Small Wireless Facility.

(6) In addition to the Application process set forth herein, Applicant shall be responsible, as may be required by law, to obtain any other governmental or regulatory permits and approvals required for the installation or Modification of a Small Wireless Facility. The Borough shall not be liable as a result of accepting an Application or issuing a Permit in the event that an Applicant is prevented from placing and/or maintaining its Small Wireless Facility pursuant to this Ordinance.

(7) Applications for Small Wireless Facilities shall include the following:

(a) Full and complete payment of all applicable Permit Application fees.

(b) A completed Application form, to the extent the Borough may adopt the same from time-to-time, signed by an authorized representative of the Applicant and made subject to all standard Permit conditions specified in this Ordinance.

(c) In the absence of an Application form, Applicant shall submit an Application packet consisting of a cover letter and all required supporting documentation. The Applicant shall detail the location of the proposed site(s), all equipment and Accessory Equipment being proposed as part of the Small Wireless Facility, and shall certify that the Applicant has included all information required

by the Borough and by all Applicable Codes. The Application packet shall be signed by an authorized representative of the Applicant. The cover letter shall also include the Applicant's name (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative responsible for the Application. If the Applicant is a Wireless Infrastructure Provider, the name and contact information for all Wireless Service Providers that will use the proposed Small Wireless Facility must be provided. Applicant shall also self-certify subject to 18 Pa.C.S. § 4904 that the filing and approval of the Application is required by the Wireless Provider to provide additional capacity or coverage for Wireless Services.

(d) Applicant's construction plans and drawings including, but not limited to, a description of the required work and renderings of the proposed Small Wireless Facility and the proposed site. Said plans and drawings shall show all equipment being proposed as part of the Small Wireless Facility, detailed site plans showing the location of the Small Wireless Facility, and details regarding proposed construction and/or excavations, if any. Photo simulations depicting the Small Wireless Facility from at least three locations near the proposed site shall also be included.

(i) If the Small Wireless Facility is proposed for Collocation on an existing or replacement Utility Pole or Wireless Support Structure that currently supports existing attachments, the depiction shall show the location and dimensions of all such attachments.

(ii) If the proposed Small Wireless Facility will be installed on a new or replacement Utility Pole or Wireless Support Structure, the depiction shall include the color, dimensions, material, and type of Utility Pole or Wireless Support Structure proposed.

(iii) Applicant's construction plans and drawings shall also comply with and include any information required by the Borough's Wireless Facilities Design Manual.

(e) The manufacturer and model, proposed location, and physical dimensions, including weight and volume, of each piece of equipment proposed as part of the Small Wireless Facility.

(f) A written certification by a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the proposed Small Wireless Facility and Wireless Support Structure are structurally sound and shall not endanger public health and safety.

(g) A seal and signature of a professional engineer, licensed in the Commonwealth of Pennsylvania and certifying compliance with all local, state, and

federal laws and regulations applicable to the proposed Small Wireless Facility, including applicable standards for radiofrequency emissions.

(h) Certification of the Application's compliance with all requirements of this Ordinance.

(i) Proof that the Applicant has mailed to the owners of all property within 150 feet of the proposed Small Wireless Facility a notice that the Applicant is submitting an Application to the Borough for placement or Modification of a Small Wireless Facility in the Right-of-Way, which notice must include:

(i) the proposed location of the Small Wireless Facility, and

(ii) a description and scale image of the proposed Small Wireless Facility consistent with that contained in the Application.

(j) A detailed request for and, explanation of the justification in support of, any waiver requested from the requirements of this Ordinance.

(k) Where an Application is made to install a Small Wireless Facility with a new Utility Pole, the Application must include sufficient information to demonstrate that an Applicant cannot meet the service reliability and functional objectives of the Application by Collocating on an existing Utility Pole or Municipal Pole instead of installing a new Utility Pole. To demonstrate this requirement, the Applicant may submit with its Application a certification that it has made this determination in good faith and shall also provide a supporting documented summary of the basis for the determination. The Applicant's determination in this regard shall be based on whether the Wireless Provider can meet the service objectives of the Application by Collocating on an existing Utility Pole or Municipal Pole on which:

(i) the Applicant has the right to Collocation;

(ii) the Collocation is Technically Feasible and would not impose substantial additional cost; and

(iii) the Collocation would not obstruct or hinder travel or have a negative impact on public safety.

An Application shall not be administratively complete unless all of the required elements set forth above are included in the Application.

(8) Timing of Application Review.

(a) Within 10 business days of receiving an Application, the Borough will determine and notify the Applicant in writing whether the Application is incomplete. If the Borough determines that an Application is incomplete, the written notice will specifically identify the information not included with the Application. The time for the Borough to process the application shall restart on the date the Applicant provides all of the information required to complete the Application. The processing deadline may be tolled or extended by a written agreement of the Applicant and the Borough. Receipt of an Application may occur on any business day of the Borough.

(b) The Borough shall process Applications on a nondiscriminatory basis and Applications shall be deemed approved if the Borough fails to approve or deny the Application within 60 days of receipt of a complete Application to Collocate and within 90 days of receipt of a complete Application to replace an existing Utility Pole or install a new Utility Pole with Small Wireless Facilities attached. A Permit associated with an Application deemed approved under this subsection shall be deemed approved if the Borough fails to approve or deny the Permit within seven business days after the date of filing the Permit Application with the Borough unless there is a public safety reason for the delay. An Applicant shall provide written notice to the Borough within 72 hours of when it discovers that a deemed approval has occurred. Written notice may be received by USPS or courier.

(c) Where the Borough denies an Application because of defects found therein, the Applicant may cure the deficiencies identified by the Borough and resubmit the Application within thirty (30) days of receiving the written basis for the denial. No Permit Application fee is required for an Application resubmitted pursuant to this section. Following resubmission, the Borough shall approve or deny the Application within thirty (30) days of the resubmission date. An Applicant shall not be entitled to more than one submission.

(9) Once approved, the Applicant shall be required to coordinate installation of the Small Wireless Facility to result in the least interference with the public use of the Right-of-Way as possible

B. Placement. Small Wireless Facilities and Accessory Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the Right-of-Way as determined by the Borough in its sole discretion.

C. Deadlines for Completion. Any Permittee granted a Permit pursuant to this Ordinance for purposes of Collocation, Modification, or replacement of a Small Wireless Facility, including installation of a new Wireless Support Structure with a Small Wireless Facility attached shall complete the construction work that is the subject of said Permit within one year of the date

the Permit is issued. The Borough and any Applicant or Permittee may agree in writing to extend the period of construction for a period of greater than one year.

D. Compensation for Right-of-Way Use. The holder of any Permit issued for a Small Wireless Facility pursuant to this Ordinance shall pay the Borough an annual fee for use and occupancy of the Right-of-Way. The fee shall be established pursuant to a fee schedule adopted by the Borough as amended from time-to-time by resolution or otherwise. Where no such fee schedule has been adopted, the fee shall be \$270 per Small Wireless Facility or \$270 per new Utility Pole with a Small Wireless Facility.

The Permittee and/or owner of each Small Wireless Facility shall be invoiced for the first annual fee on the date the Permit is issued, prorated based on the proportion of the calendar year then remaining. Subsequent invoicing shall be prospective and occur each January. Said invoices shall be paid within thirty (30) days of receipt thereof. Any unpaid invoice shall be subject to interest accruing on the unpaid amount at eighteen percent (18%) per annum beginning on the 31st day from the date of invoice until paid.

E. Design Guidelines and Aesthetic Requirements. Small Wireless Facilities shall be designed, installed, operated, and maintained in compliance with all design guidelines, aesthetic requirements, or concealment measures adopted or amended by the Borough from time-to-time. Such requirements, if any, are contained in the Wireless Facilities Design Manual, a copy of which shall be kept on file in the Borough office. Applicant's design shall comply with all other Applicable Codes of the Borough including the Borough's Zoning Ordinance. The Wireless Facilities Design Manual may be amended by resolution from time-to-time by a resolution of the Borough Council.

§ 1-5: General Requirements

A. Compliance.

(1) The Small Wireless Facility Applicant shall submit proof of compliance with all Applicable Codes, including but not limited to Act 50 and those established by the FCC, as part of any complete Small Wireless Facility Application.

(2) If such Applicable Codes are modified, the Permittee of the Small Wireless Facility shall bring such Small Wireless Facility into compliance with the modified Applicable Codes within three (3) months of the effective date of such Applicable Codes unless a different compliance term is required by the controlling state or federal agency. Failure to bring such Small Wireless Facilities into compliance shall constitute grounds for revocation of a Permit and the removal of the Small Wireless Facility at the Permittee's expense.

(3) All Small Wireless Facilities shall meet or exceed all applicable standards set forth by the state or federal government, as well as any applicable industry standard. In case of

conflict, the most stringent requirements shall prevail. All necessary certifications shall be obtained by the Applicant or Permittee, as applicable, and shall be provided to the Borough.

- (4) Small Wireless Facilities shall be installed and Modified in a manner that:
 - (a) Ensures that placement of Small Wireless Facilities on existing structures is within the tolerance of those structures.
 - (b) Ensures that the Applicant's or Permittee's use does not inconvenience the public, interfere with the primary uses of the Right-of-Way, or hinder the ability of the Borough or other government entities to improve, modify, relocate, abandon, or vacate the Right-of-Way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the Right-of-Way.
 - (c) Ensures that the Applicant's or Permittee's use does not obstruct, endanger, or hinder travel or public safety within a Right-of-Way, damage or interfere with other utility facilities located within a Right-of-Way or obstruct or interfere with the legal use of the Right-of-Way by the Borough or other utility.
 - (d) Ensures that the Borough bears no risk or liability because of the installation or Modification of a Small Wireless Facility.
- (5) Small Wireless Facilities in the public Right-of-Way requiring the installation of a new Wireless Support Structure shall not be located immediately in front of any building entrance or exit.
- (6) All Small Wireless Facilities shall comply with all applicable requirements of the Americans with Disabilities Act and all Applicable Codes, including those applicable to streets and sidewalks.
- (7) No Small Wireless Facility shall be installed, Modified, placed, operated, repaired, or maintained in a manner that causes, or is likely to cause, interference with the Borough's infrastructure, equipment, or services. Said infrastructure, equipment, and services include, but are not limited to, the Borough's traffic signal system, public safety radio system, electric distribution system, or Borough communications system. If a Small Wireless Facility causes such interference, then the Permittee, at its own expense, shall take all steps necessary to immediately correct and eliminate the interference. The Borough may terminate a Permit for a Small Wireless Facility based on such interference if the interference is not remedied by the Permittee.

B. Attachment to Municipal Structures. Subject to the requirements and processes of this Ordinance, Act 50, and all Applicable Codes, Applicants are permitted to Collocate Small Wireless Facilities on Municipal Poles. The Borough will allow Collocation on Municipal Poles using the process required under Act 50 and Applicable Codes unless:

(i) The Small Wireless Facility would cause structural or safety deficiencies to the Municipal Pole, in which case the Borough and Applicant shall work together for any make-ready work or modifications or replacements that are needed to accommodate the Small Wireless Facility as otherwise required in this Ordinance; or

(ii) The Borough has reserved the space on the Municipal Pole for other public purposes.

The Borough shall allow the Collocation of Small Wireless Facilities to structures owned by the Borough in the following preferred order, from most to least preferable:

- (1) Traffic signage poles without traffic signals;
- (2) Traffic signage poles with traffic signals;
- (3) Non-decorative light poles;
- (4) Telecommunications poles;
- (5) Electric distribution poles;
- (6) Decorative light poles.

If the Small Wireless Facility Applicant is proposing the Collocation of a Small Wireless Facility on a lower preference structure, it shall be a condition to the approval of the Application that the Small Wireless Facility Applicant provide evidence that Collocation on a higher preference structure or Wireless Support Structure owned by a third-party is not Technically Feasible. The cost of Collocating on a higher preference structure or Wireless Support Structure shall not be included in evaluating Technical Feasibility. Collocation of a Small Wireless Facility on a Municipal Pole shall not create or vest in any Applicant, Wireless Provider, or Wireless Service Provider any ownership or property rights in such Municipal Poles except as expressly provided for in this Ordinance or pursuant to applicable law.

This Ordinance shall not be construed to require the Borough to construct, retain, extend, place, or maintain any Municipal Pole or other municipal facilities not needed for the Borough's own utility service requirements.

An Applicant has no right to object to the Borough granting permission to any party regarding use of a Municipal Pole.

Where applicable, an Applicant's Collocation of a Small Wireless Facility on a Municipal Pole shall be placed and maintained at all times in accordance with the requirements, specifications, rules and regulations of the latest edition of the National Electrical Safety Code and subsequent revisions thereof, any governing authority having jurisdiction, this Ordinance, and any reasonable design standards and rules governing pole attachments in the Borough as the Borough may adopt from time-to-time, and shall be otherwise consistent with generally accepted industry standards.

If requested by the Borough, each Small Wireless Facility Collocated on a Municipal Pole shall be identified at all times by an identifying marker/band/tag stating the name of person holding the Permit. The marker/band/tag shall, at a minimum, (a) be reasonably durable under the typical weather conditions in the area and (b) have coloring unique to the person holding the Permit. If the Borough elects to require marking/banding/tagging by the Wireless Permittee, the Borough shall provide the Permittee information concerning the type and color of marker/band/tag to be used in satisfying the requirements of this section. Such markers/bands/tags shall also be capable of being read unaided from the ground by an adult of typical height and vision.

Make-ready work shall be performed as specified in Section 1-8 of this Ordinance.

C. Insurance. Each Permittee and any person who owns or operates a Small Wireless Facility shall annually provide the Borough with a certificate of insurance, in a form satisfactory to the Borough Solicitor, evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Small Wireless Facility and naming the Borough as an additional insured on each insurance policy. All Permits issued for location of a Small Wireless Facility pursuant to this ordinance shall be deemed to be revoked in the event said insurance policy is cancelled, expires, or ceases to exist.

D. Outdated Equipment. As part of the construction, Modification, or replacement of a Small Wireless Facility, the Permittee shall remove any obsolete or abandoned equipment from the Wireless Support Structure or Utility Pole.

E. Weather. All Small Wireless Facilities shall be designed to withstand the effects of wind, ice, water, and heat to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.

F. Inspection Reports. All Permittees shall submit inspection reports to the Borough upon request to ensure structural integrity and compliance with all Applicable Codes. Inspection reports shall be delivered to the Borough by the Permittee within thirty (30) days of request by the Borough. These inspection reports may include, but are not limited to, descriptions of routine maintenance or repair work, and descriptions of the physical degradation of a Small Wireless Facility.

G. Maintenance. The following maintenance requirements shall apply:

- (1) All Small Wireless Facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance, repair, or replacement.
- (2) Such maintenance shall be performed to ensure the upkeep of the Small Wireless Facility, to promote the health, safety, and general welfare of the Borough's residents, and to remain compliant with all Applicable Codes.

(3) All maintenance activities shall utilize nothing less than the best available technology in accordance with the applicable standard in the industry for preventing failures and accidents. Maintenance logs shall be timely provided to the Borough upon request.

H. Historic Districts. No Small Wireless Facility may be located within seventy-five (75) feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed under the Pennsylvania Historic District Act, located within a Historic District, or is included in the official historic structures list maintained by the Borough.

§ 1-6: Discontinuance.

A. Process. If use of a Small Wireless Facility and/or its dedicated Accessory Equipment is to be discontinued, the Permittee shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. A Small Wireless Facility and/or dedicated Accessory Equipment not operated for a period of twelve (12) months shall be considered abandoned. Discontinued or abandoned Small Wireless Facilities, or portions of Small Wireless Facilities, shall be removed as follows:

- (1) All abandoned or unused Small Wireless Facilities and Accessory Equipment shall be removed within ninety (90) days of the cessation of operations at the site or receipt of notice that the Small Wireless Facility has been deemed abandoned by the Borough unless a time extension is approved by the Borough.
- (2) If the Small Wireless Facility or Accessory Equipment is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the Borough, the Small Wireless Facility and/or associated facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the Small Wireless Facility regardless of the owner's or operator's intent to operate the Small Wireless Facility in the future.
- (3) The Borough reserves the right to pursue all available remedies under the law to ensure removal of the Small Wireless Facility and restoration of the site at the expense of the Permittee. Any delay by the Borough in taking action shall not invalidate the Borough's right to take action.

With respect to a Small Wireless Facility Collocated on a Municipal Pole, the Borough may abandon a Municipal Pole upon thirty (30) days' notice to the Permittee. Permittee must remove or transfer all Facilities from abandoned Municipal Poles within the same thirty (30) days unless granted additional time by the Borough. The Borough will not unreasonably withhold consent of such request for additional time. The Permittee shall post a decommissioning bond in the amount of one hundred percent (100%) of the total cost of decommissioning with the Borough. If the Borough has no attachment(s) on said Municipal Poles and the Permittee has not removed or transferred its Facilities therefrom, the Borough may, in its sole discretion: (1) revoke the Permit

for that Municipal Pole; or (2) remove the Small Wireless Facilities at the Permit holder's expense, with no liability falling on the Borough except in the case of gross negligence or willful misconduct.

B. Required Discontinuance. The Borough may require the discontinuance of a Small Wireless Facility if:

- (1) The Borough determines that the space is needed for public purpose; or
- (2) The Borough desires to decommission the Utility Pole; or
- (3) The Borough designates the area of the subject Utility Pole or Wireless Support Structure as an underground district.

Within ninety (90) days of receipt of a notice of discontinuance from the Borough, the Permittee shall remove the Small Wireless Facility and any Accessory Equipment, including the Utility Pole and any Wireless Support Structures if the Permittee's Small Wireless Facilities and Accessory Equipment are the only Wireless Facilities on the Utility Pole. The Borough shall not be liable to the Permittee or Applicant as a result of requiring the discontinuance of a Small Wireless Facility in the event that an Applicant or Permittee is prevented from placing and/or maintaining its Small Wireless Facility pursuant to this section.

§ 1-7: Indemnification.

Each person that owns or operates a Small Wireless Facility shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Small Wireless Facility. Each person that owns or operates a Small Wireless Facility, or holds a Permit issued pursuant to this Ordinance, shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the permitting, construction, installation, operation, maintenance, and/or removal of a Small Wireless Facility. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, verdicts, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

Further, a Permittee shall repair all damage to the Right-of-Way or any other land so disturbed, directly caused by the activities of the Permittee or the Permittee's contractors and return the Right-of-Way in as good of condition as it existed prior to any work being done in the Right-of-Way by the Permittee. If the Permittee fails to make the repairs required by the Borough within 30 days after written notice, the Borough may perform those repairs and charge the Permittee the reasonable, documented cost of the repairs plus a penalty of \$500. In the event an Applicant or Permittee has failed to pay any costs invoiced by the Borough for repair work or penalties charged

pursuant to this section, the Borough shall not process any further Applications unless or until the Applicant or Permittee has paid the amount assessed for the repair costs and the assessed penalty. Any unpaid invoice shall be subject to interest accruing on the unpaid amount at eighteen percent (18%) per annum beginning on the 31st day from the date of invoice until paid.

§ 1-8: Standard Permit Conditions.

All Wireless Permits under this Ordinance are issued subject to the following minimum conditions:

- (1) The Permittee shall at all times maintain compliance with this Ordinance and all Applicable Codes.
- (2) The Permittee shall at all times maintain with the Borough accurate contact information for the Permittee and all Wireless Service Providers making use of the Small Wireless Facility, which shall include, at minimum, a name, phone number, mailing address, and email address for at least one natural person.
- (3) The Borough shall have the right to support, repair, disable, or remove any components of a Small Wireless Facility if the Small Wireless Facility threatens imminent harm to persons or property.
- (4) The Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent persons, properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the Small Wireless Facility.
- (5) The Permittee shall maintain all Small Wireless Facilities and any associated structures in a good condition and in a neat and clean manner in accordance with all approved Application documents and conditions of approval.
- (6) The Permittee shall retain full and complete copies of all Permits, Applications, and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the Permit or regulatory approval. In the event the Borough cannot locate any such full and complete Permits, Applications, or other regulatory approvals in its own official records, and the Permittee fails to retain full and complete records in the Permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be presumed resolved against the Permittee.
- (7) Every Small Wireless Facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.
- (8) Make-Ready Work. For any Municipal Pole Collocation Application, the Borough shall provide a good faith estimate for any make-ready work, including any make ready

engineering costs, necessary to enable a Municipal Pole to support the requested Collocation by a Wireless Provider, including pole replacement, if necessary, within 60 days after receipt of a complete Application. The Borough shall also provide the Applicant with a schedule for completing any make-ready work. Make-ready work, including pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the Applicant. Any unpaid invoice sent by the Borough to an Applicant for fees for make-ready work shall be subject to interest accruing on the unpaid amount at eighteen percent (18%) per annum beginning on the 31st day from the date of invoice until paid.

(9) Future Use. The Borough may reserve space on an existing Municipal Pole for future public uses in a documented and approved plan as adopted at the time an Application is filed. A reservation of space shall not preclude Collocation, the replacement of an existing Utility Pole or the installation of a new Utility Pole. If the replacement of a Municipal Pole is necessary to accommodate Collocation and the reserved future use, the Wireless Provider shall pay for the replacement Municipal Pole and the Municipal Pole shall accommodate the future use.

(10) An Applicant or the Applicant's designee shall ensure that a contractor or subcontractor performing construction, reconstruction, demolition, repair, or maintenance work on a Small Wireless Facility deployed under this Ordinance meets and attests to all of the following requirements:

(a) Maintain all valid licenses, registrations or certificates required by the Federal Government, the Commonwealth or the applicable local government entity that is necessary to do business or perform applicable work.

(b) Maintain compliance with the act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act, the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law, and bonding and liability insurance requirements as specified in the contract for the project.

(c) Has not defaulted on a project or been suspended on a project by the Federal Government, the Commonwealth, or a local government entity within the previous three years.

(d) Has not been convicted of a misdemeanor or felony relating to the performance or operation of the business of the contractor or subcontractor within the previous 10 years.

(e) Has completed the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the Small Wireless Facility.

(f) Prior to the commencement of work, the contractor and/or subcontractor shall provide the Borough with a certificate of insurance, in a form satisfactory to the Borough Solicitor, evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Small Wireless Facility and naming the Borough as an additional insured on each insurance policy. All Permits issued for location of a Small Wireless Facility pursuant to this ordinance shall be deemed to be revoked in the event said insurance policy is cancelled, expires, or ceases to exist.

(g) The contractor and/or subcontractor shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the contractor and/or subcontractor, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Small Wireless Facility. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, verdicts, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

(11) A Permit issued pursuant to this Ordinance shall not be assigned or otherwise transferred without the prior written approval of the Borough.

(12) Approval of an Application shall authorize the Applicant to, subject to the Permit requirements and the Applicant's right to terminate at any time, operate and maintain Small Wireless Facilities and any Accessory Equipment on a Utility Pole covered by the Permit for a period of not less than five years, which shall be renewed for two additional five-year periods if the Applicant is in compliance with the criteria set forth in Act 50 or Applicable Codes consistent with Act 50 and the Applicant has obtained all necessary consent from the Utility Pole owner.

§ 1-9: Revocation of Permit

The Borough may revoke a Wireless Permit for failure to comply with the conditions of the Permit or Applicable Codes after providing adequate notice to the Permittee and allowing the Permittee an opportunity to cure any noncompliance. Within 60 days of suspension or revocation of a Permit due to noncompliance with Act 50 or other Applicable Codes, the Applicant shall remove the Small Wireless Facility and any Accessory Equipment, including the Utility Pole and any Wireless Support Structures if the Applicant's Small Wireless Facilities and Accessory Equipment are the only Wireless Facilities on the Utility Pole. Within 90 days of the end of a Permit term or an extension of the Permit term, the Applicant shall remove the Small Wireless Facility and any Accessory Equipment, including the Utility Pole and any Wireless Support

Structures if the Applicant's Small Wireless Facilities and Accessory Equipment are the only Wireless Facilities on the Utility Pole.

§ 1-10: Restoration

If a Permittee removes or relocates a Small Wireless Facility from the Right-of-Way under this Ordinance, the Permittee must restore the Right-of-Way to its prior condition in accordance with Borough specifications. If the Permittee fails to make the restorations required by this Ordinance, the Borough at its option may do such work. In that event, the Permittee shall pay to the Borough, within 30 days of billing thereof, all costs and expenses incurred by the Borough in restoring the Right-of-Way. Any unpaid invoice shall be subject to interest accruing on the unpaid amount at eighteen percent (18%) per annum beginning on the 31st day from the date of invoice until paid.

§ 1-11: Violations and Penalties

A. This Ordinance shall be enforced by the Mayor of the Borough. If the Mayor determines that any person has violated this chapter, then a notice of violation shall be issued by the Mayor describing the violation and a time period for compliance. If the person to whom the notice of violation is issued fails to comply as directed, the Mayor shall order the discontinuance of noncompliance and may pursue any other enforcement remedies available at law or equity.

B. Any person who has violated the provisions of this chapter, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, shall pay a judgment of not more than \$600 plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation.

C. Nothing herein contained shall prevent the Borough from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 2. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be illegal or invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion or provision shall be severable and shall not affect or impair any remaining portion of this Ordinance and Chapter, which shall remain in full force and effect.

SECTION 3. REPEALER

All provisions of previous Ordinances of the Borough which are contrary to this Ordinance are expressly repealed only to the extent to which they are inconsistent with this Ordinance and/or Act 50.

SECTION 4. SAVINGS CLAUSE

In all other respects, all ordinances, codes, resolutions, rules, and regulations of the Borough shall remain as previously adopted, approved, enacted, and ordained. It is declared as the intent of the Borough that nothing in this Ordinance shall be interpreted as inconsistent with Act 50 and/or discriminatory in nature.

SECTION 5. POLICE POWERS/IMMUNITY

The Borough, by granting any permit or taking any other action pursuant to this Ordinance, does not waive, reduce, lessen, or impair the lawful police powers vested in the Borough under applicable federal, state, and local laws and regulations. Nothing herein shall be construed to mean that the Borough intends to limit or waive any rights or immunities arising out of any applicable governmental immunity laws or statutes. This Ordinance, and the terms and provisions set forth herein, are intended solely for the purposes set forth herein, and are expressly not intended to provide any tort or contractual remedy to any third party beyond those provided by statutes and beyond those set forth herein.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect immediately.

ENACTED, ORDAINED, AND APPROVED this 19th day of October, 2021.

Borough Council of the Borough of
Mifflinburg, Union County, Pennsylvania

By: _____

Beverly L. Hackenberg, Council President

ATTEST:

Margaret A. Metzger, Secretary

David M. Cooney, Mayor