

OFFICIAL

**BOROUGH OF CRAFTON
ORDINANCE NO. _____**

AN ORDINANCE OF THE BOROUGH OF CRAFTON,
ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING
CHAPTER 193 OF THE CRAFTON CODE OF ORDINANCES,
STREETS AND SIDEWALKS, TO REGULATE WIRELESS
COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-
WAY.

WHEREAS, Section 1202(5) of the Borough Code, 8 Pa. C.S.A. §1202(5), enables the Council of the Borough of Crafton (“Borough”) to make regulations as may be necessary for the health, safety, morals, general welfare and cleanliness and beauty, convenience, comfort and safety of the Borough; and

WHEREAS, Section 1202(12) of the Borough Code enables the Council of the Borough to regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts and rains, and the heights, grades, widths, slopes and their construction, and to prohibit the erection or construction of any building or other obstruction to the convenient use of same; and

WHEREAS, the Council of the Borough desires to enhance the ability of wireless communications carriers to deploy wireless infrastructure in the Borough quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability; and

WHEREAS, the Council of the Borough also desires to ensure that Wireless Communication Facilities (“WCF”) will conform to all applicable health and safety regulations and will blend into their environment to the greatest extent possible; and

WHEREAS, the Council of the Borough desires to enact a new ordinance to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, collocation, modification, operation, and removal of wireless communication facilities in the public right-of-way; and

WHEREAS, the Council of the Borough desires to comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Sections 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, all FCC rules and regulations to interpret and implement applicable federal statutes, and the Pennsylvania Wireless Broadband Collocation Act, 53 P.S. § 11702.1 *et seq.*

NOW, THEREFORE, be it ordained and enacted by the Borough Council of the Borough of Crafton, and it is hereby ordained and enacted by and with the authority of the same,

incorporating the above recitals by reference:

SECTION 1. The Borough of Crafton Code of Ordinances (“Crafton Code”) is hereby amended to add a new Article VII to Chapter 193 of the Crafton Code, Streets and Sidewalks, to regulate wireless communications facilities in the public right-of-way, as follows:

Chapter 193, Streets and Sidewalks

Article VII - WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Section 193-50. Applicability.

- (A) *Existing Wireless Communications Facilities.* WCF for which a permit has been issued prior to the effective date of this Article VII of Chapter 193 of the Crafton Code (“Article”) shall not be required to meet the requirements of this Article, except as set forth in Section 193-59, Nonconforming Wireless Communications Facilities.
- (B) *Exclusions.* This Article shall not govern the following:
 - (1) The installation of any amateur radio facility that is owned or operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
 - (2) The installation of any over the air receiving (“OTAR”) antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded. OTAR antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.
 - (3) The use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the public right-of-way.
- (C) *Relationship to other chapters.* This Article shall supersede all conflicting requirements of other provisions and chapters of the Crafton Code regarding the locating and permitting of WCF in the public right-of-way.

Section 193-51. General Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings ascribed to them below, regardless of capitalization.

ANTENNA

Any apparatus designed for the purpose of the transmission and/or reception of radio frequency (“RF”) radiation, to be operated or operating from a fixed location to facilitate wireless

communications services including, but not limited to, the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.

APPLICANT

Any person that submits an application to the Borough to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the public right-of-way.

COLLOCATION

The mounting or installation of a Wireless Communications Facility on an existing Support Structure for the purpose of transmitting and/or receiving RF signals for communications purposes.

PUBLIC RIGHT-OF-WAY (“ROW”)

Real property for or devoted to: (1) public transportation purposes; or (2) the placement of the Borough’s municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of public right-of-way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the Borough.

SUBSTANTIAL CHANGE

A collocation or modification that:

- (a) Increases the overall height of an existing Support Structure more than 10% or 10 feet;
- (b) Increases the width more than 6 feet from the edge of an existing Support Structure;
- (c) Involves the installation of any equipment cabinet on the ground when there are no existing ground-mounted equipment cabinets;
- (d) Involves the installation of any ground-mounted equipment cabinet that is 10% larger in height or volume than any existing ground-mounted equipment cabinets;
- (e) Involves excavation or deployment of equipment outside the area in proximity to the support structure and other Transmission Equipment already deployed on the ground;
or
- (f) Would defeat the existing concealment elements of the Support Structure as determined by the Borough.

SUPPORT STRUCTURE

A pole or other 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 for collocation. This term includes vertical support structures for traffic lights but does not include horizontal structures to which signal lights or other traffic control devices are attached.

WIRELESS COMMUNICATIONS FACILITY (“WCF”)

The equipment and network components, including Antennas, transmitters and receivers and associated ancillary equipment installed and operated for the transmission of wireless communications service. The term does not include Support Structure.

WIRELESS COMMUNICATIONS SERVICE

Any FCC-licensed or authorized wireless communication service including, without limitation, any personal wireless services, as defined in 47 U.S.C. § 332(c)(7).

Section 193-52. Applications to place a Wireless Communications Facility in the Public Right-of-Way. An application for a Wireless Communications Facility is subject to the following regulations:

(A) *Approvals Required.*

(1) *Wireless Communications Facility in the Public Right-of-Way Permit* (“WCF ROW Permit”). Any applicant wishing to place or modify a WCF in the Public Right-of-Way must apply for and obtain from the Borough a WCF ROW Permit granting the applicant permission to construct the proposed WCF and occupy the Public ROW at the proposed site, subject to: (a) satisfaction of the standard conditions listed in this Article; and (b) any additional conditions required by the Borough to carry out the purposes and intent of this Article and the Crafton Code. A WCF ROW Permit shall not convey title, equitable or legal, in the ROW.

(2) *Zoning.* Applicants seeking to construct a WCF outside of the public ROW or a WCF greater than 50 feet in height must obtain all approvals required by Chapter 225 of the Crafton Code, Zoning.

(3) *Other Approvals.* The Applicant must obtain all other required permits under the Borough of Crafton Code of Ordinances, including, but not limited to, permits required under Chapter 90, Code Enforcement, and Chapter 125, Grading.

(B) *Contents of the Application.* An applicant for a WCF ROW Permit shall submit an application to the Borough Building Inspector and/or his or her agent (“Inspector”), which includes the following:

(1) *Application Fee.* The applicant must provide a permit application fee as determined by the Borough.

(2) *Regulatory Authorization.* To the extent that the applicant claims any regulatory authorization or other right to use the public right-of-way, the applicant must

provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim. If an applicant has given valid authorization in connection with prior applications, the Inspector may rely on the prior documentation when accepting additional applications.

- (3) *Operator's Authorization.* The Applicant must submit the name of the operator of the WCF and evidence sufficient to show that either: (1) the applicant is the operator or (2) the applicant has obtained the operator's written authorization to perform the specific work for which consent has been requested on behalf of the operator.
 - (4) *Site Plans and Structural Calculations.* The applicant must submit fully dimensioned site plans, elevation drawings and structural calculations prepared, sealed, stamped and signed by a Professional Engineer licensed and registered by the Commonwealth of Pennsylvania. Drawings must depict any existing WCF and all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
 - (5) *Structural Integrity.* The Applicant must show that the proposed WCF and/or associated equipment does not negatively impact the structural integrity of the Support Structure and that it complies with all applicable local, state, and federal codes and regulations.
 - (6) *Permission to Occupy.* If an Applicant proposes collocation on an existing privately-owned Support Structure, the Applicant must provide documentation of its permission to occupy the Support Structure.
 - (7) *Supplemental Information.* The Inspector may request the applicant provide supplemental information as necessary to evaluate a proposed site or to help identify readily available and technically feasible alternative sites. To the extent that any such information request relates to applicant business decisions, technical information, justification statements, or other information, the provision of such information shall not be a condition for approval of the application.
- (C) *Application Process.*
- (1) *Optional Pre-Application Meeting.* Pre-submittal conferences are strongly encouraged, particularly for applications involving Substantial Changes to existing Support Structures or installation of new Support Structures. An applicant may request an appointment for a pre-submittal conference with the Inspector to discuss possible projects. The conference is intended to identify the correct application type and content requirements for any given project, and to create an informal forum in which applicants and the Inspector can discuss any aesthetic, historic preservation or other concerns that should be addressed as soon as possible to avoid

any unnecessary delays in the processing of an application and deployment of wireless facilities in the Borough. Each conference is generally limited to discussion of a single potential project, but applicants may request to discuss multiple projects provided that the additional time required does not prejudice other applicants' ability to obtain an appointment.

- (2) *Shot Clocks.* Within 30 calendar days of the receipt of an application for a WCF ROW Permit, the Inspector shall notify the applicant in writing of any information that may be required to complete the application.

Upon receipt of a complete application that does not propose a Substantial Change to an Existing Support Structure, the Inspector shall make a final decision to approve or deny the application. The Inspector shall advise the applicant in writing of the decision within 60 calendar days of receipt of a complete application.

Upon receipt of a complete application that requires a Substantial Change to the existing Support Structure or Installation of a New Support Structure, the Inspector shall make the final decision to approve or deny the application. The Inspector shall advise the applicant in writing of the decision within 90 calendar days of receipt of a complete application.

- (3) *Denial.* An application may be denied if any one of the following conditions exist:
 - (a) The applicant has not demonstrated that its application conforms to the provisions of this Article and the Crafton Code.
 - (b) The applicant is not authorized to conduct business in the Commonwealth of Pennsylvania.
 - (c) The applicant is in default of its obligation to pay to the Borough fees imposed by this Article.
 - (d) The design or location does not comply with the relevant standards promulgated by the Pennsylvania Department of Transportation for construction in the right-of-way.
 - (e) The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United States Access Board.
- (4) *Appeal of Decision.* The decision of the Inspector regarding the issuance of a WCF ROW Permit may be appealed to Borough Council by the applicant or a person aggrieved. The appeal must be in writing and delivered to the Borough's Business Office no later than 5:00 p.m. (EST) on the 10th business day after written notification by the Borough of the decision. An appeal must provide a detailed explanation, in writing, of the basis for the appeal. The appeal should include

supporting documentation. Within 30 days of receipt of the appeal, Borough Council shall hold a public hearing to review the application *de novo*. The public hearing shall be advertised at least 7 days in advance in a newspaper of general circulation and will include a stenographer, the fees for which will be paid by the appellant. The Borough Council shall review the written appeal together with any evidence in the record and grant the permit if it determines that, based on substantial evidence, the permit complies with the requirements of this Article and all other requirements under the law. The Borough Council shall issue a written decision within 15 days of the decision. Failure to appeal under this section shall constitute a failure to exhaust administrative remedies for purposes of any subsequent appeal in a court of law.

Section 193-53. Eligible Facilities Request

- (A) An Applicant seeking approval of a modification under 47 U.S.C. § 1455(a), which requires approval for an Eligible Facilities Request for a modification of an existing Support Structure that does not Substantially Change the physical dimensions of such Support Structure, must provide proof of permits of equivalent municipal authority for the existing WCF. Federal regulations provide specific definitions and criteria for approval or denial. The provisions in this Part IV are intended to assist applicants and the Inspector to determine whether an application qualifies for approval as a minor modification.
- (B) *Criteria for Approval.* The Inspector may approve an application for an Eligible Facilities Request when it finds that the project:
 - (1) involves Collocation, removal or replacement of transmission equipment on an existing Support Structure; and
 - (2) does not Substantially Change the physical dimensions of the existing Support Structure.
- (C) *Criteria for Denial.* Consistent with all applicable federal laws and regulations, the Inspector may deny an application for a minor modification when it finds that the proposed project:
 - (1) does not satisfy the criteria for approval;
 - (2) violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
 - (3) involves the replacement of the entire Support Structure.
 - (4) the design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United States Access Board.
- (D) An Eligible Facilities Request must still meet the requirements of Section 193-55 of this Article.

Section 193-54. Minor Technical Exceptions. The Inspector may, in its sole discretion, grant a minor technical exception from strict compliance with any design and location requirements when the Inspector finds that:

- (A) The applicant has requested an exception in writing;
- (B) The need for the exception arises from an external factor outside the applicant's control that impacts public health, safety or welfare, including without limitation soil compaction, existing congestion or clutter within the right-of-way or other location-specific phenomenon;
- (C) The proposed deviation from the applicable requirement is less than 10% larger than the generally applicable standard; and
- (D) The granting of a minor technical exception would not create any obvious hazard or unreasonable obstruction in the public ROW.

Section 193-55. Conditions of Approval.

- (A) These conditions apply to all WCF approvals, including, without limitation, approval by the Inspector, approval on appeal, and approval by operation of law (i.e. a deemed approval).
- (B) *Standard Conditions of Approval:*
 - (1) *Compliance with all applicable laws.* The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations, ordinances, or other rules.
 - (2) *Inspections; emergencies.* The Borough or its designee may inspect a WCF upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The Borough reserves the right to support, repair, disable, or remove any elements of the WCF in emergencies or when the WCF threatens imminent harm to persons or property.
 - (3) *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the WCF, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Inspector and shall be maintained by the Borough.
 - (4) *Indemnities.* The permittee and, if applicable, the operator of a WCF shall defend, indemnify, and hold harmless the Borough and its agents, officers, officials, and employees from:

- (a) Any and all damages, liabilities, injuries, losses, costs, and expenses arising out of any claims, demands, lawsuits, writs of mandamus, or other actions or proceedings brought against the Borough to challenge, attack, seek to modify, set aside, void, or annul the Borough's approval of the applicable WCF ROW Permit; and
 - (b) Any and all damages, liabilities, injuries, losses, costs, and expenses and any claims, demands, lawsuits, or other actions or proceedings of any kind, whether for personal injury, death, or property damage, arising out of or in connection with the activities or performance of the permittee or its agents, employees, licensees, contractors, subcontractors, or independent contractors.
 - (c) In the event the Borough becomes aware of any such actions or claims, the Borough shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the Borough shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Borough's defense, and the permittee (as applicable) shall reimburse Borough for any costs and expenses directly and necessarily incurred by the Borough in the course of the defense.
- (5) *Interference with public safety radio services.* In the event that the Borough has reason to believe that permittee's radio communications operations are causing interference with the Borough's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the Borough to either rule out permittee as the interference source or eliminate the interference. Cooperation with the Borough may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.
- (6) *General maintenance.* The site and the WCF, including but not limited to all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval. WCF shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.
- (7) *Graffiti abatement.* Permittee shall remove any graffiti on the WCF at permittee's sole expense.
- (8) *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- (9) *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted WCF at permittee's sole expense to accommodate construction of a public improvement project by the Borough.

- (10) *Removal if discontinued use.* In the event that the use of a WCF is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. If a WCF is not removed within 90 days of discontinued use, the Borough may remove it at the owner's expense irrespective of the notice requirement under this section.
 - (11) *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the Borough as a result of a permittee's use or occupation of the public ROW, the permittee shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.
 - (12) *Prevention of failures and accidents.* Any person who owns a WCF sited in the ROW shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
 - (13) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the Borough a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this section. The bond or equivalent financial method must specifically cover the cost of removal of each WCF that the owner installs in the ROW in case the Borough has to remove or pay for removal of the WCF. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.
 - (14) *Conditions of approval.* The Borough may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.
- (C) *Additional Conditions of approval for Substantial Changes to the Existing Support Structure or Installation of a New Support Structure.* In addition to the standard conditions of approval listed in Section 193-55(B) of this Article, an application for a WCF ROW Permit involving Collocation with Substantial Changes to the existing Support Structure or requiring the installation of a new Support Structure must conform to the following:
- (1) The WCF, its Support Structure, equipment and all associated improvements, shall be designed and sited in a manner that is sympathetic to the particular architectural character of the buildings and compatible with the streetscape in the vicinity of the proposed project site.
 - (2) Design elements of the WCF, its Support Structure, equipment and all associated improvements, shall be selected to reflect the detailing and materials associated with the buildings and streetscape in the vicinity of the project site.

- (3) The WCF, its Support Structure, equipment and all associated improvements, shall be designed and sited in a manner that does not adversely impact right-of-way circulation, accessibility, or obstruct existing or planned-future uses of the right-of-way.
- (4) The WCF shall comply with all applicable design, construction and location provisions in this Article.

Section 193-56. General Design and Construction Standards

- (A) *General Design and Construction Standards.* The Borough desires to promote organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. All WCF must comply with all applicable provisions in this section. In the event that any other law, regulation or code requires any more restrictive structural design and/or construction requirements, the most restrictive requirement will control.
- (1) *Collocation.* The Borough encourages applicants to consider existing poles and other potential Support Structures prior to any new pole including collocations between two separate wireless service providers on the same Support Structure whenever feasible.
 - (2) *Pole-Mounted Equipment Cages.* The Borough prefers and strongly encourages pole-mounted equipment cages in lieu of underground or ground-mounted equipment facilities. Equipment cages may not extend more than 10 inches beyond the pole centerline on either side. The equipment cage must be non-reflective and painted, wrapped or otherwise colored to match the existing pole. All pole-mounted equipment must be installed as flush to the pole as possible.
 - (3) *Underground Equipment Vaults and Ground-Mounted Equipment.* Generally, pole-mounted equipment cages are preferred; however, an applicant, upon good cause shown, may be permitted to install underground equipment vaults or ground-mounted equipment where a pole-mount would be otherwise unfeasible.
 - (4) *Electric Meter.* Multiple operators on a shared pole shall share a single electric meter, if feasible. Site operators shall use the smallest and least intrusive electric meter available.
 - (5) *Lights.* Unless otherwise required for compliance with FAA or FCC regulations, the facility shall not include any permanently installed lights. Any lights associated with the electronic equipment shall be appropriately shielded from public view. The provisions in this subsection shall not be interpreted to prohibit installations on streetlights or the installation of luminaires on new poles when required by the Inspector.

- (6) *Generally Applicable Health and Safety Regulations.* All facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions.

(B) *New and Replacement Poles*

- (1) *General Restrictions on Poles.* In all locations, the Inspector may require a metal pole rather than a wood pole, or vice versa, based on the build and/or natural environmental character of the proposed site location.
- (2) *Overall Height.* Poles in the ROW shall not exceed 50 feet in height. The applicant shall consider other poles in the vicinity, the built environment, the neighborhood character, and the overall site appearance when proposing a new pole. The zoning district height limit shall not be determinative.
- (3) *Lighting; Banners.* The Inspector may require the applicant to install functional streetlights and/or banners when technically feasible and the Inspector determines that such additions will enhance the overall appearance and usefulness of the proposed facility.

(C) *Installations on Existing Poles and Other Support Structures*

- (1) *Borough-Owned Structures.* As a general matter, the Borough allows operators to attach to Borough-owned Support Structures. The Borough, in its proprietary and regulatory capacities, however, retains sole discretion to identify reasonable terms and conditions for such attachments. Such terms include, in addition to other requirements set forth in Chapter 193-55 of the Crafton Code:
 - (a) The Applicant, at its own cost, shall assess the Support Structure to demonstrate technical feasibility and compliance with applicable Borough safety standards.
 - (b) If the Borough determines that “make-ready” improvements are necessary for structural integrity or technical reasons, the applicant shall be responsible to pay all such costs including replacement or modification of a Borough-owned wireless support structure. Make-ready work shall conform to the Borough’s requirements for the type of structure being replaced.
 - (c) The Borough retains ownership of the modified or replacement Support Structure.
 - (d) The permittee shall be responsible for all costs assessed for occupying the Borough-owned Support Structure.

- (e) The Borough shall not be responsible for any state or local tax liabilities or assessments attributable to the WCF attachments.
- (f) *Independent Power Source.* A WCF on a Borough-owned Support Structure may not use the same power source that provides power for the original purpose of the Support Structure.

Section 193-57. General Location Criteria

- (A) *Site/Collocation Preference.* Whenever an applicant proposes to place a new WCF in the public ROW, the Inspector may propose an alternate location within 100 feet from the proposed existing WCF or within a distance that is equivalent to the width of the public way in or on which the new WCF is proposed, whichever is greater, whether on a new pole or an existing Support Structure. The applicant must use the alternate location (Collocation or new Support Structure), if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.
- (B) *General Limitation on New Poles.* The Inspector strongly discourages more than one (1) WCF on a new pole per block and will not approve more than one per block on each side of the street, unless the denial would have the effect of prohibiting the provision of wireless service to a location, in which case applicant may apply for a limited exception.
- (C) *Alignment with Other Poles.* The centerline of any new pole must be aligned with the centerlines of existing poles on the same sidewalk segment. After the Inspector approves a proposed new pole location, but before the permittee commences construction, the permittee must verify the correct pole alignment in the field.
- (D) *Setbacks for Visibility and Access.* Any new pole and/or equipment and other improvements associated with a new pole or an existing pole must be setback from intersections, alleyways and driveways and placed in locations where it will not obstruct motorists' sightlines or pedestrian access. In general, the Inspector will presume that no obstruction will occur when a new pole and/or equipment is setback at least: (i) 50 feet from any intersection; (ii) six (6) feet from any driveway cut or alleyway entrance or exit; and (iii) six (6) feet from any permanent object or existing lawfully-permitted encroachment in the public right-of-way, including without limitation bicycle racks, traffic signs and signals, street trees, open tree wells, benches or other street furniture, streetlights, door swings, gate swings or sidewalk café enclosures. The Inspector may, in its discretion, require an additional setback for a specific pole when it determines that the presumptively acceptable setback would nevertheless obstruct motorists' sightlines or pedestrian access. Notwithstanding the foregoing, the Inspector may permit collocation of wireless facilities on existing wireless support structures within 50 feet of an intersection if the pole attachment otherwise complies with this Article and does not adversely affect traffic circulation, public safety, pedestrian access, or the reliable operation of the traffic facilities.

- (E) *Obstructions.* Any new pole and/or equipment and other improvements associated with a new pole or an existing pole must not obstruct any: (i) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (ii) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop (including, without limitation, bus stops, streetcar stops, and bike share stations); (iii) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (iv) fire hydrant access; (v) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right-of-way; or (vi) access to any fire escape.

Section 193-58. Independent Consultants; Recovery of Costs; Use of Revenue.

- (A) *Authorization to retain independent consultants.* The Borough may at any time in the review process, select and retain an independent consultant with expertise in telecommunications in connection with any permit application. In the event that the Borough decides to retain an independent consultant for technical review, it shall send written notice to the applicant including a nonbinding estimate of the cost for such review. The applicant shall have five business days from the date of mailing of notice to elect to withdraw the application without any liability for any costs or expenses in connection with the independent technical review.
- (B) *Recovery of additional costs incurred in processing application.* The Borough is authorized to charge the applicant for recovery of additional, reasonable costs incurred in its analysis, evaluation, and response to an application under this Article if the actual costs of review exceed the application fee. Nothing in the reasonableness limitation on additional costs shall be construed to bar or limit the Borough's authority to incur costs it deems necessary or appropriate in connection with the application. Additional costs may include unforeseen Borough staff review costs and the costs of third-party technical experts hired to assist with reviewing the application. No Borough building or Wireless ROW Permits shall issue until and unless the applicant pays the application fee and such additional costs as are authorized to be recovered under this paragraph.
- (C) *Reimbursement.* All costs recovered under this Article shall be used to reimburse the Borough for its costs incurred in responding to applications and monitoring installation and maintenance of Wireless Communication Facilities in the right-of-way.

Section 193-59. Nonconforming Wireless Communication Facilities.

- (A) Any WCF sited in the public ROW that is legally in existence on the date of the adoption of this Article, but that does not comply with the requirements of this Article, shall be permitted to remain in the right-of-way but shall be considered a nonconforming WCF.
- (B) If a nonconforming WCF is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this Article.

- (C) The provisions in this section shall not be applied to prohibit or deny any collocation or modification as required by FCC regulations.

Section 193-60. Penalties.

- (A) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any WCF in violation of any of the terms of this Article, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a separate offense each day during the period such violation continues.
- (B) If any WCF is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this Article or of any regulations made pursuant hereto, the proper officer of the Borough, in addition to other remedies, may institute in the name of the Borough any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.
- (C) The Borough is authorized to make requests and to issue orders regarding WCF in the public ROW for the purpose of public safety and compliance with this Article. The Borough and its authorized agents is also authorized to conduct visual and external inspections of WCF and Support Structures in the public ROW at any time and shall make efforts to coordinate with the provider responsible for a WCF for any internal inspection of the relevant equipment.
- (D) Failure to obtain a building permit to construct WCF in the public ROW is enforceable under Chapter 90 of the Crafton Code.

SECTION 2. Should any sentence, section, clause, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, other than the part declared to be invalid.

SECTION 3. All prior ordinances are hereby repealed in whole or in part to the extent inconsistent herewith.

SECTION 4. This Ordinance shall take effect in accordance with applicable law.

ORDAINED and **ENACTED** this __ day of _____, 2020, by the Council of the Borough of Crafton in lawful session duly assembled.

ATTEST:

BOROUGH OF CRAFTON

Russell McKibben
Borough Manager/Secretary

By: _____
Phillip Levasseur
President, Borough Council

EXAMINED and **APPROVED** this _____ day of _____, 2020

James Bloom, Mayor