RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

ORDINANCE CM-18-25

Ordinance No. _____ *Passed* July 24, 20 18

AN ORDINANCE CREATING CHAPTER 160 TO THE CODIFIED ORDINANCES OF THE MUNICIPALITY OF WEST MILTON TITLED SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES AND DESIGNATING CERTAIN AREAS AS STRICTLY FOR UNDERGROUND OR BURIED UTILITIES

WHEREAS, the Municipality of West Milton regulates the public right-of-way through Chapter 159 of the Code of Ordinances; and

WHEREAS, Ohio House Bill 478 made certain changes to Ohio statues concerning the local permitting of small cell facilities and wireless support structures; and

WHEREAS, Ohio House Bill 478 has been enacted into law and permits the Municipality to designate certain areas as strictly for underground or buried utilities and within the designated area to restrict or prohibit the placement of new utility poles or wireless support structures as it relates to the construction, placement, or use of a small cell facility and associated supporting structure subject to certain conditions as set forth in ORC 4939.0314(G); and

WHEREAS, it is necessary to further define, amend and expand the Code of Ordinances by creating a new Chapter regulating Small Cell Facilities and Wireless Support Structures; and

WHEREAS, there are certain areas of the Municipality of West Milton, where substantial investment has been made and will be made to improve those areas and enhance or preserve certain aesthetic standards; and

WHEREAS, the Municipality of West Milton in the interest of public safety, necessity, and health, desires to designate certain areas within the Municipality as strictly for underground or buried utilities.

NOW THEREFORE, BE IT RESOLVED by the Council of the Municipality of West Milton, Ohio that:

SECTION I: The Council hereby creates Chapter 160 – Small Cell Facilities and Wireless Support Structures to the Code of Ordinances. (See attached Exhibit A)

SECTION II: The Council hereby designates the following areas as strictly underground or buried utilities and prohibit any new utility poles or wireless support structures. (See attached Exhibit B)

SECTION III: This Ordinance shall take effect and be in full force from and after its passage.

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

Ordinance No. _____ *Passed* _____, *20* _____

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

ORDINANCE CM-18-25

Ordinance No. _____ *Passed* July 24, 20 18

Passed this 24 day of July 2018

Anthony Miller, Mayor

ATTEST:

Linda L. Cantrell, CAP/OM
Clerk of Council

APPROVED AS TO FORM:

Lenee' Brosh
Law Director

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

Ordinance No. _____ *Passed* _____, *20* _____

Exhibit
A

CHAPTER 160: SMALL CELL FACILITIES & WIRELESS SUPPORT STRUCTURES

160.01 PURPOSE AND INTENT

The purpose of this Ordinance is to establish general procedures and standards for the siting, construction, placement, collocation, modification, operation, and removal of small cell facilities and/or wireless support structures within the Municipality of West Milton and to comply with Ohio Revised Code Section 4939.

The goals of this chapter are to:

(A) Provide standards for the siting, construction, placement, collocation, modification, operation, and removal of small cell facilities and wireless support structures within the Municipality of West Milton.

(B) Establish criteria for making application to promote fair and efficient processing of applications.

(C) Ensure that small cell facilities and wireless support structures conform to all applicable health and safety regulations.

(D) Preserve the character of the Municipality's neighborhoods and/or historic districts by limiting the overall number of facilities within the Municipal Right of Way.

(E) Reduce visual clutter and preserve and enhance the aesthetic environment of the Municipality.

(F) Ensure the safety of motorists, pedestrians, and other users of the Municipal Rights of Way by limiting the placement and overall number of facilities within close proximity to roadways, sidewalks, or other such ways of travel.

(G) Establish a fair and reasonable method to recover costs incurred in administering this ordinance.

160.02 DEFINITIONS

Within this ordinance words with specific defined meanings are as follows:

Abandoned. Any small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the Municipality and receiving the Municipality's approval.

Agent. A person that provides the Municipality written authorization to work on behalf of a public utility.

Antenna. Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

Applicant. Any person that submits an application to the Municipality to site, construct, place, collocate, modify, operate, and/or remove a small cell facility or wireless support structure in the Municipality .

Collocation, Collocate. To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure or utility pole.

Cable Operator, Cable Service, Franchise. These words have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.

Decorative Pole. A pole, arch, or structure other than a street light pole placed in the Right of Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

(1) Electric lighting;
(2) Specially designed informational or directional signage;
(3) Temporary holiday or special event attachments.

Enclosure. A cabinet for equipment intended to conceal its contents, prevent electrical shock to users, and protect the contents from the environment.

Equipment. Electrical and/or mechanical devices or components.

Historic District. A building, property, or site, or group of buildings, properties, or sites that are either of the following:

(1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;
(2) A registered historic district as defined in Section 149.311 of the Ohio Revised Code.

Municipal Electric Utility. The same meaning as in section 4928.01 of the Ohio Revised Code.

Ohio Manual of Uniform Traffic Control Devices, OMUTCD. The uniform system of traffic control devices promulgated by the department of transportation pursuant to Section 4511.09 of the Ohio Revised Code.

Occupy, Use. With respect to a Right of Way, to place a tangible thing in a Right of Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

Permittee. A person issued a permit.

Person. Any natural person, corporation, or partnership and also includes any governmental entity.

Public Utility. A wireless service provider as defined in division (A)(20) of section 4927.01 of the Ohio Revised Code or any company described in section 4905.03 of the Ohio Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Ohio Revised Code; and includes any electric supplier as defined in section 4933.81 of the Ohio Revised Code.

Public Way Fee. A fee levied to recover the costs incurred by the Municipality and associated with the occupancy or use of a Right of Way.

Right of Way, Public Way. Public Right(s) of Way or Right(s) of Way means the surface and space in, on, above, within, over, below, under or through any real property in which the Municipality has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway river, tunnel, viaduct, bridge, conduit or any other place, area, or real property owned by or under the legal or equitable control of the Municipality that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing a public or private Utility System. Public Rights of Way shall not include a public building, public park, or other public property or easement that has not been dedicated to a compatible use, except to the extent the use or occupation of such property is specifically granted in a Permit or approved by Law.

Small Cell Facility. A wireless facility that meets both of the following requirements:

(1) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than 6 cubic feet in volume;.

(2) All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the

connection of power and other services.

Small Cell Facility Operator. A wireless service provider, or its designated agent, or cable operator, or its designated agent, that operates a small cell facility and provides wireless service as defined in division (T) of section 4939.01 of the Ohio Revised Code. For the purpose of this chapter, "operator" includes a wireless service provider or cable operator that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C.153(20), and services that are fixed in nature or use unlicensed spectrum.

Substantial Change. Substantial change means the same as defined by the FCC in 47 C.F.R. § 1.40001 (b) (7), as may be amended, and as applicable to facilities in the public right of way, which defines that term as a collocation or modification that:

(1) Increases the overall height more than 10% or 10 feet (whichever is greater);
(2) Increases the width more than 6 feet from the edge of the wireless support structure;
(3) Involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;
(4) Involves the placement of any new ground-mounted enclosures that are ten percent (10%) larger in height or volume than any existing ground-mounted enclosures;
(5) Involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless communications equipment already deployed on the ground;
(6) Would defeat the existing concealment elements of the wireless support structure as determined by the Municipal Manager or his designee; or
(7) Violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, enclosures or excavation that is inconsistent with the thresholds for a substantial change.

Note: For clarity, the definition in this Chapter includes only the definition of a substantial change as it applies to installations in the public right of way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted wireless support structure without regard to any increases in size due to wireless facilities not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012.

Utility Easement. An easement dedicated for the use of a Public Utilities Commission of Ohio regulated utility.

Utility Pole. A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric distribution or telecommunications service. The term excludes street signs and decorative poles.

Wireless Facility. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

(1) Equipment associated with wireless communications;
(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
(3) The term includes small cell facilities.
(4) The term does not include any of the following:
    A. The structure or improvements on, under, or within which the equipment is collocated;
    B. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless Service. Any services using licensed or unlicensed wireless spectrum whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless Service Provider. A person who provides wireless service as defined in division (A)(20) of section 4927.01 of the Ohio Revised Code.

Wireless Support Structure. A pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a 15' or taller sign pole, or utility pole capable of supporting wireless small cell facilities. As used in section 4939.031 of the Ohio Revised Code this chapter, "wireless support structure" excludes all of the following:

(1) A utility pole or other facility owned or operated by a municipal electric utility;
(2) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

Permit, Work Permit. A permit issued by the Municipality that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the Right of Way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the Right of Way. Also, a permit issued by the Municipality that must be obtained in order to occupy the Municipality's Right of Way.

160.03 APPLICABILITY

No small cell facility operator may collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way except in conformance with all provisions of this Chapter and any other applicable requirements of the Municipality of West Milton.

160.04 PROCEDURES

160.04.1 PERMIT REQUIRED

Unless otherwise exempted, it shall be unlawful for any person to collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way unless a permit has been issued by the Municipal Manager or his designee.

160.04.2 APPLICATION REQUIREMENTS

This section specifies the necessary requirements for a complete permit application. A complete application shall consist of the following:

(A) Application Fee - The applicant must provide the applicable permit application fee in the amount currently required by the Municipality of West Milton and listed in its permit fee schedule.

(B) RF Compliance Affidavit - Applicants must submit a sworn affidavit prepared and signed by an RF engineer with knowledge about the proposed project that affirms the proposed project will be compliant with all applicable governmental regulations in connection with human exposure to radiofrequency emissions. The affidavit must include:
   (1) All frequencies on which the equipment will operate;
   (2) How many channels will be used on each frequency;
   (3) The effective radiated power ("ERP");
   (4) Output level in measured watts; and
   (5) The height above ground for the lowest point on the lowest transmitter.
   (6) The required disclosures above must be included for all transmitters on the support structure, which includes without limitation existing collocated antennas and antennas used for wireless backhaul (such as microwave dish antenna or U/E relay).

(C) 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.

(D) Owner's Authorization – Applicants must submit evidence sufficient to show that either:
(1) The applicant owns the proposed support structure, or
(2) The applicant has obtained the owner's authorization to file the application.

(E) 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 State of Ohio. Drawings must depict any existing wireless facilities with all existing wireless communications equipment and other improvements, the proposed facility with all proposed wireless communications 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.

(F) Equipment and Enclosure Specifications. The applicant shall provide dimensioned elevations, cut sheets material samples or other construction documents necessary to evaluate for compliance with this Chapter.

(G) Statement of Intent. The applicant shall provide a statement of a wireless support structure's intended purpose.

160.04.3 APPLICATION TYPE

(A) Each application to collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along 1 across, upon, and/or under the Right of Way shall be classified as one of three types. The three types of applications are:
(1) Small Cell Minor - An application that:
(a) Involves removal or replacement of small cell facilities and any associated equipment on an existing wireless support structure; and such removal or replacement does not constitute a substantial change; or
(b) Involves the routine maintenance of a small cell facility.
(2) Small Cell Substantial – An application that:
(a) Involves the installation of a new small cell facility on a wireless support structure; or
(b) Involves the removal or replacement of a small cell facility on an existing wireless support structure and such removal or replacement constitutes a substantial change.
(3) Wireless Support Structure - An application for a proposal to construct, modify or replace a wireless support structure in the Right of Way.

(B) Applications seeking to collocate a small cell facility to a wireless support structure owned by the Municipality and located within the Municipality Right of Way shall also be required to obtain an Attachment Certificate and shall be subject to an attachment fee in an amount set by the Municipality of West Milton Fee Schedule as set forth below:

Fee Schedule as set forth below:

Small Cell Work Permit Application Fee
Small Cell Collocation Permit Application Fee
Wireless Support Structure Permit Application Fee

Attachment to Municipal Pole (Annual Reimbursement Charge)
Waiver/Appeal Application

Fee Schedule as set forth below:

Small Cell Work Permit Application Fee Small Cell Collocation Permit Application Fee
Wireless Support Structure Permit Application Fee
Attachment to Municipal Pole (Annual Reimbursement Charge)
Waiver/Appeal Application Fee

$250.00
$250.00
$250.00
$250.00
$250.00

160.04.4 DECISIONS

(A) The Municipal Manager or his designee shall review the application for conformance with the standards of this [Chapter] and shall either:
(1) Approve, approve with conditions, or deny a Small Cell Minor application; or
(2) Grant or deny consent for Small Cell Substantial and Wireless Structure applications.

(B) If a request is denied, the reasons for denial shall be provided in writing to the applicant.

(C) The Municipality reserves the right to deny an application if any one of the following conditions exist:

(1) The application does not comply with a provision of this Chapter or a provision of the Municipality of West Milton Codified Ordinances;
(2) The applicant is not authorized to conduct business in the State of Ohio;
(3) The applicant is not current in its obligation to pay to the Municipality fees or taxes imposed by this [Chapter];
(4) The design or location is deemed unsafe or non-compliant in regards to transportation and engineering standards for construction within the Right of Way;
(5) The design is counter to the health, safety, and welfare of the Municipality;
(6) The design or location is in conflict with current or proposed accessibility standards;
(7) The design does not meet standards related to electrical, structural, safety or construction best practices.
(8) The proposed design is in conflict with existing infrastructure, facilities, and/or utilities.

(D) Except as allowed in subsection (E) below, applications shall be reviewed and a decision rendered according to 160.04.4(A) - Decisions, within the following time periods:
(1) Small Cell Minor - Small Cell Minor applications shall be rendered within 60 days of the date of filing.
(2) Small Cell Substantial -Small Cell Substantial applications shall be rendered within 90 days of the date of filing.
(3) Wireless Support Structure -Wireless Support Structure applications shall be rendered within 120 days of the date of filing.

(E) The time period required in subsection (D) above may be tolled only:
(1) By mutual agreement between the applicant and the Municipality;
(2) If the application is determined to be incomplete; or
(3) The number of applications exceeds the Municipality's capacity to process them in a timely manner. If such number of applications exceeds capacity then the following tolling time periods may be instituted:
(a) The time period may initially be tolled for up to 15 days when the number of applications received within any consecutive 30 day period exceeds 25 applications;
(b) For every additional 15 applications that the Municipality receives above the 25 applications stated in (A) the time period may be tolled an additional 15 days; and
(c) For every additional 30 applications that the Municipality receives above the 25 applications stated in (A) the time period may be tolled an additional 15 days.
(d) However, in no instance shall the time tolled exceed 90 consecutive days.

(F) To toll the time period for incompleteness, the Municipality shall provide the

applicant notice within 30 days of the date of filing. Such notice shall include a listing of the missing documents and/or information. The time period resumes once the applicant submits a response. If an application is still incomplete, the Municipality shall notify the applicant within 10 days of the response.

(G) If multiple applications are received by the Municipality to install two or more wireless support structures that would violate the spacing requirements of ORC Section 4349, or to collocate two or more small cell facilities on the same wireless support structure, the Municipality shall process and render a decision in the order they are received.

(H) In the event that an application is received by the Municipality to install a wireless support structure or small cell facility in a location in common with another application for a facility in the ROW, preference shall be granted in the following order of service provided:
(1) Municipal Infrastructure
(2) Water
(3) Electricity
(4) Gas
(5) Landline Telephone
(6) Wireless Service

160.04.5 AMENDMENTS

Amendments to an application in process which are not part of a response to a notice of incompleteness or a correction notice shall be treated as a new application.

160.04.6 ISSUANCE OF PERMITS AND CERTIFICATES

(A) When an application is approved or granted consent, a permit shall be issued to the applicant authorizing the following:
(1) Small Cell Work Permit - A permit to perform the approved action, removal, replacement, or maintenance work, subject to any conditions;
(2) Small Cell Collocation Consent - Consent to perform the approved removal, replacement, or installation, and grant occupancy within the Municipality Right of Way, subject to any permits or conditions;
(3) Wireless Support Structure - Consent to construct, modify or replace a wireless support structure in the Right of Way, subject to any permits or conditions.

(B) An applicant seeking collocation of a small cell facility to a wireless support structure owned by the Municipality and located within the Municipality Right of Way shall be issued an Attachment Certificate authorizing such attachment, subject to any conditions.

160.04.7 SCOPE OF APPROVAL

(A) No permit or certificate authorized by this Chapter shall be transferrable.

(B) No permit or certificate authorized by this Chapter shall convey title, equitable or legal, in the Right of Way.

160.04.8 DURATION OF APPROVAL

(A) The work authorized by the permit issued must be completed within 180 days from the date of issuance, unless otherwise conditioned as part of the approval.

(B) An Attachment Certificate is valid for 10 years from the date of issuance and may be renewed by the applicant in successive 5 year terms. Any request for renewal is subject to approval by the Municipal Manager or his designee and may be denied for cause.

(C) In the event that any court of competent jurisdiction invalidates any portion of federal law which mandates approval of any permit, such permit shall automatically expire 1 year from the date of the judicial order.

(D) In the event that any court of competent jurisdiction invalidates any portion of state law which mandates approval of any permit shall automatically expire 60 days from the date of the judicial order.

160.04.9 REVOCATION

The following are grounds for revocation or denial of approval:

(A) The intentional provision of materially misleading information by the applicant (the provision of information is considered "intentional" where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence);

(B) The failure to comply with any condition of approval, order, or other applicable law, rule, or regulation;

(C) The site, structure or operation is otherwise not in compliance with any other provision(s) of applicable law;

(D) The subject site or use is otherwise not in compliance due to incomplete work or projects, or is a not in compliance due to unperformed or slow to perform work as part of an open permit.

160.04.10 APPEALS

The Board of Adjustments shall hear and decide upon appeals where it is alleged there is an error in any written decision made by the Municipal Manager or his designee in the enforcement of this Code.

(A) A complete written appeal shall be filed by the appellant within 10 days of the written decision of the Municipal Manager or designee or the appeal shall become void. The appeal shall be filed with the Board of Adjustments. The written appeal shall:
   (1) Cite specific provisions of this ordinance that are alleged to have been interpreted in error or the specific action being appealed and the grounds on which the appeal is being made;
   (2) Include any required application fee in an amount set by the Municipality's Fee Schedule.
   (3) Include such other information as may be required to render a reasonable decision; and
   (4) Include a statement as to why the appellant has standing as an aggrieved party to pursue the appeal.

(B) An aggrieved party, the Municipality of West Milton Municipal Manager or the Manager's designee, may appeal the Board of Adjustments decision to the Common Pleas Court of Miami County, Ohio.

(C) The Board of Adjustments shall not be required to hear any case that has been the subject of an appeal during the previous 12 months, unless substantial new evidence, critical to the case, becomes available.

160.05 STANDARDS

160.05.1 GENERAL

The Municipality of West Milton desires to promote orderly small cell facility and wireless support structure installations using the smallest and least intrusive means available to provide services to the community. All such installations in the public right of way shall comply with all applicable provisions in this section. All applications shall be subject to the following conditions:

(A) Compliance with all Applicable Laws - Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

(B) Right to Inspect - The Municipality or its designee may inspect a small cell facility or wireless support structure within the Right of Way upon reasonable notice to the Permittee. The Permittee shall cooperate with all inspections. The Municipality reserves the right to support, repair, disable, or remove any elements of the small cell facility or wireless support structure in emergencies or

when the small cell facility or wireless support structure threatens imminent harm to persons or property.

(C) Contact information - Permittee shall at all times maintain accurate contact information for all parties responsible for the small cell facility or wireless support structure, 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 Municipal Manager or his designee.

(D) Indemnities - The permittee and, if applicable, the non-government owner of a small cell facility or wireless support structure shall defend, indemnify, and hold harmless the Municipality and its agents, officers, officials, and employees from:

(1) 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 Municipality to challenge, attack, seek to modify, set aside, void, or annul the Municipality 's approval of the applicable permit or certificate; and

(2) 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 1 licensees, contractors, subcontractors, or independent contractors.

(3) In the event the Municipality becomes aware of any such actions or claims, the Municipality shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the Municipality shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Municipality 's defense, and the permittee (as applicable) shall reimburse Municipality for any costs and expenses directly and necessarily incurred by the Municipality in the course of the defense.

(E) Interference with Municipality Communication Services - In the event that the Municipality has reason to believe that permittee's operations are causing interference with the Municipality 's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the Municipality to either rule out permittee as the interference source or eliminate the interference. Cooperation with the Municipality may include, but shall not be limited to, temporarily switching the equipment on and off for testing.

(F) Adverse Impact - Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility or wireless support structure.

(G) Maintenance - The site and the small cell facility or wireless support structure, including but not limited to all landscaping, fencing, and related equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

(H) Good Condition - Small cell facilities and wireless support structures shall at all times employ best practices and maintain in use only the best available technology and methods for preventing failures and accidents so that the same shall not menace or endanger the life or property of any person.

(I) Graffiti and Vandalism - Permittee shall remove any graffiti at permittee's sole expense.

(J) Exposure to RF Radiation - All small cell 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.

(K) Utility Lines - Service lines must be undergrounded whenever feasible to avoid additional overhead lines.

(L) Relocation for Public Improvements - Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the Municipality.

(M) Removal if Discontinued - In the event that the use of a small cell facility is discontinued, the owner shall provide written notice to the Municipality of its intent to discontinue use and the date when the use shall be discontinued. If a small cell facility is not removed within 90 days of discontinued use, the Municipality may remove it at the owner's expense irrespective of the notice requirement under this section.

(N) Abandoned - In the event that the use of a small cell facility is abandoned, the Municipality may remove it at the owner's expense.

(O) Site Restoration

(1) Upon completion of the new work, the contractor shall restore the street and/or alley pavement as required;

(2) Upon completion of the new work, the contractor shall restore all concrete walks, driveway aprons, and other concrete as required;

(3) Upon completion of the new work, the contractor shall restore all tree lawns and/or sod strips with topsoil and sod.

(P) General Construction -All work and designs shall comply with the following general standards for construction in the Municipality's Right of Way:

(1) Municipality of West Milton Codified Ordinances;

(2) Municipal and County Standard Construction Drawings;
(3) Municipal and County Construction and Material Specifications;
(4) Ohio Department a/Transportation (ODOT) Location and Design Manual;
(5) ODOT Standard Drawings;
(6) ODOT Construction and Material Specifications;
(7) Ohio Manual of Traffic Control Devices;
(8) American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets;
(9) AASHTO roadside design guide;
(10) AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities;
(11) AASHTO Guide for Development of Bicycle Facilities;
(12) United States Access Board (USAB) Proposed Guidelines for Pedestrians in the Public Right-of-Way;
(13) USAB American with Disabilities Act Accessibility Guidelines;
(14) National Fire Protection Association 70 National Electric Code; and
(15) All other applicable local, state, and federal codes and regulations.
(16) All requirements of Chapter 945 the Municipality of West Milton Code shall be complied with if the applicant intends to install wireless communications on private property.

(Q) Taxes and assessments - To the extent taxes or other assessments are imposed by taxing authorities on the use of Municipality property as a result of an applicant's use or occupation of the right of way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.

(R) Interference - Small cell wireless and wireless support structures shall be constructed and maintained in such a manner that will not interfere with the use of other property.

(S) Financial Condition - All owners must procure and provide to the Municipality a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this chapter. Such bond or financial mechanism must specifically cover the cost of removal of the item placed in the Right of Way.

(T) Setbacks for Visibility and Access - Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure must be setback from intersections, alleys and driveways and placed in locations where it will not obstruct motorists' sightlines or pedestrian access.

(U) Obstructions - Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support

structure or an existing small cell facility or wireless support structure shall not obstruct any:

(1) 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;

(2) 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);

(3) Worker access to above ground or underground infrastructure owned or operated by any public or private utility agency;

(4) Fire hydrant access;

(5) 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

(6) Access to any fire escape.

(V) Historic or Architecturally Significant Structures -Any new utility installation and other Improvements associated with a new utility installation or an existing utility installation may not be placed directly in front of any historic or architecturally significant structures in prominent or highly visible locations.

(W) No placement of any small cell facility or wireless support structure shall necessitate tree trimming, cause removal of, or otherwise damage any tree located within the Municipality's Right of Way or a designated utility easement. Such small cell facility or wireless support structure shall not be located within the eventual mature dripline or tree crown of any existing tree located within the Municipality's Right of Way or a designated utility easement.

160.05.2 DESIGN AND SITING REQUIREMENTS

(A) General Requirements:

(1) Wireless support structures shall align with other poles to achieve a uniform inline appearance.

(2) Wireless support structures shall be setback from the edge of pavement according to applicable safety and construction standards as set forth in section 967.05.

(3) All small cell facilities and wireless support structures and any related items shall be installed and maintained plumb and level and shall maintain an orderly and neat appearance.

(4) All equipment and enclosures shall be attached, anchored and/or strapped tightly to poles using corrosion resistant steel hardware.

(5) Wireless support structures shall support no more than two small cell facilities.

(6) Ambient noise suppression measures or placement of the equipment in locations less likely to impact adjacent properties shall be required to

ensure compliance with all applicable noise regulations.

(7) Unless otherwise required for compliance with FAA or FCC regulations, the small cell facility or wireless support structure shall not include any permanently installed lights. Any lights associated with the equipment shall be appropriately shielded from public view. This shall not be interpreted to prohibit streetlights or the placement of luminaries by the Municipality.

(B) Location

(1) In accordance with [ORC 4939.0314(D) the Municipality shall reserve the right to propose an alternate location to the proposed location of a new wireless support structure, provided the alternate location is within 100' or a distance equal to the width of the Right of Way in or on which the new wireless support structure is proposed, whichever is greater. The Municipality of West Milton also finds that certain locations and collocation configurations are preferred. A preferred location and collocation configuration should be utilized whenever possible and should only be surpassed if in the determination of the Municipal Manager or his designee, clear and convincing evidence supports such a decision. Cost alone should not be grounds for such a determination. The order of preference is as follows:

(a) First, small cell facilities should be collocated on an existing pole or wireless support structure within a utility easement. If no such pole or wireless support structure is available then proceed to the next preference;

(b) Second, small cell facilities should be collocated on an existing pole or wireless support structure within an alley. If no such pole or wireless support structure is available then proceed to the next preference;

(c) Third, small cell facilities should be collocated on a new wireless support structure within a utility easement. If no such location is available then proceed to the next preference;

(d) Fourth, small cell facilities should be collocated on a new wireless support structure within an alley. If no such location is available then proceed to the next preference;

(e) Fifth, small cell facilities should be collocated on a wireless support structure currently supporting a small cell facility located within the Municipality Right of Way. If no such wireless support structure is available then proceed to the next preference;

(f) Sixth, small cell facilities should be collocated on an existing pole located within the Municipality Right of Way. If no such existing pole is available then proceed to the next preference;

(g) Seventh, small cell facilities should be collocated on a new wireless support structure located within a utility easement. If no such location is available then proceed to the next preference;

(h) Eighth, small cell facilities should be collocated on a new wireless support structure located within an alley. If no such

location is available then proceed to the next preference;

(i) Ninth, small cell facilities should be collocated on a new wireless support structure located within the Municipality Right of Way.

(2) Any new wireless support structure shall be located at least 1230' from any existing small cell facility.

(C) Wireless Facilities Design

(1) Wireless support structures shall be subject to the following design standards:

(a) Wireless support structures shall be limited to 40 feet in height.

(b) Wireless support structures shall be capable of supporting at least two small cell facility operators.

(c) New wireless support structures shall have the following design elements:

i. Material - aluminum poles;

ii. Color - black anodized;

iii. Diameter - 12 inches;

iv. Style - smooth round tapered profile;

v. Base - trapezoidal pedestal base on a reinforced concrete footing/foundation pier;

vi. Exception - If the aesthetics and character of the immediate area would be better matched by a pole of a different material, color, style, or base as determined by Municipal Manager or his designee, then such design elements may be substituted with an alternate design element. Such determination shall be based on the following factors:

a. The design features of nearby poles serving in a similar capacity

b. The design features of the existing or proposed streetscape, district or site;

c. The historical context of a district or specific site;

d. A desire to camouflage or conceal the pole from view.

(2) Small cell facilities shall be subject to the following design standards:

(a) The Municipality reserves the right to require the following:

i. Antenna and all associated equipment shall be concealed to the extent deemed necessary by the [Decision Maker] in response to the aesthetic context of the small cell facility. Some possible configurations include but shall not be limited to the following:

a. Antenna(s) associated with the first fitting on a wireless support structure shall be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. The Municipal Manager or his designee may approve a side- mounted antenna with the

initial fitting if, in the Municipal Manager and his designee's discretion, the side-mounted antenna would be a better match to the aesthetics and character of the immediate area and would promote the purposes of this Chapter.

b. GPS antennas be placed within the radome or directly above the radome not to exceed six inches.

(b) Each Antenna and all associated equipment shall not exceed 6 cubic feet in volume.

i. All portions of a Small Cell Facility other than an antenna and as identified by the ORC 4939.01 (P) 2, shall not exceed 28 cubic feet in volume per facility.

ii. Small cell facilities mounted to a wireless support structure shall be completely concealed within a common enclosure capable of containing at least two small sell facilities. Such common enclosures shall:

iii. Not exceed 21 cubic feet in volume;

iv. Not exceed 90 inches in height, 20 inches in width, or 20 inches in depth;

v. Not extend more than 24 inches away from the pole on which it is mounted;

vi. Shall be centered on the vertical axis of the pole to which it is mounted;

vii. Be mounted at a distance of at least 10 feet measured from grade to the bottom of the enclosure;

viii. Be mounted on the side of the pole facing away from nearest traffic lane's direction of travel.

(c) Such common enclosures shall have the following design elements:

i. Material - The enclosure material shall be metal, a composite, or an equivalent material as determined by the Municipal Manager or his designee.

ii. Color - The enclosure shall match the color of the pole on which it is mounted.

iii. Style - The enclosure shall match the style of the pole on which it is mounted.

iv. Coordinated Design Elements - Common enclosures shall match the material, color, and style of nearby existing common enclosures when:

a. Such enclosures are located within 5000' of an existing common enclosure; and

b. Such enclosures are mounted on wireless support structures of a similar or matching design.

Exception - If the aesthetics and character of the immediate area would be better matched by an enclosure a different material, color, style, or by deviating from the

design of a nearby existing common enclosure as determined by Municipal Manager or his designee then such design elements may be substituted with an alternate design element. Such determination shall be based on the following factors:

- The design features of nearby poles serving in a similar capacity;
- The design features of the existing or proposed streetscape, district, or site;
- The historical context of a district or specific site;
- A desire to camouflage or conceal the enclosure from view.

(d) All ground mounted equipment shall be placed in an underground vault. No above grade ground mounted equipment in service of a small cell facility is permitted unless the following conditions can be satisfied as determined by the Municipal Manager or his designee. The applicant has submitted clear and convincing evidence that the equipment cannot feasibly be pole-mounted, placed in an underground vault, or hidden within or integrated into an existing streetscape element (i.e. - bus stop shelter). Increased costs alone shall not be a consideration. If a ground mounted enclosure is approved, the Municipal Manager or his designee shall reserve the right to require any of the following conditions:

i. Concealed Enclosure - All equipment shall be completely concealed within a metal, composite, or equivalent material enclosure as determined by the Municipal Manager or designee.

ii. Smallest Size - The enclosure shall be no larger than necessary based on the smallest available size of the proposed equipment as determined by the Municipal Manager or his designee.

iii. Camouflage - Camouflaging elements may be required. Such elements may include, but shall not be limited to, public art displayed on the enclosure, strategic placement in less visible or obtrusive locations, placement within an existing streetscape element, landscape screening, and strategic painting or coating to camouflage such enclosure or equipment.

iv. The maximum height of any such enclosure shall be 30".

160.06 RESERVATION OF RIGHT OF WAY

The Municipality reserves the right to Reserve space for future public safety or transportation uses in the Right of Way or on a wireless support structure or pole owned or operated by the Municipality in a documented and approved plan in place at the time an application is filed. A reservation of space shall not preclude placement of a pole or collocation of a small cell facility. If replacement of the Municipality's pole or wireless support structure is necessary to accommodate the collocation of the small cell facility and the future use, the small cell facility operator shall pay for the replacement of the pole or wireless support structure, and the replaced pole or wireless support structure must accommodate the future use.

160.07 NONCONFORMITY

A nonconforming small cell facility and/or wireless support structure shall immediately lose its nonconforming designation and must be brought into compliance with all of the provisions of this chapter, and all other applicable Municipality laws and ordinances or be removed if any of the following conditions are present:

(A) The nonconforming small cell facility and/or wireless support structure or a part of the nonconforming small cell facility and/or wireless support structure is altered, modified, relocated, replaced, or changed in any manner whatsoever;

(B) The nonconforming small cell facility and/or wireless support structure is damaged or deteriorated and requires any process of reconstruction, repair, maintenance, or restoration, and the cost of said reconstruction, repair, maintenance, or restoration exceeds fifty percent of the small cell facility and/or wireless support structure's replacement cost;

(C) The nonconforming small cell facility and/or wireless support structure is abandoned.

160.08 CONFLICT WITH OTHER PROVISIONS

In the event that any other applicable law or code requires any more restrictive requirements, the most restrictive requirement shall control.

160.09 SEVERABILITY

The provisions of any part of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances, is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

160.10 PENALTIES

(A) Any person in violation of any of the terms of this chapter, 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 misdemeanor of the first degree with each day during the period such violation continues constituting a separate offense.

(B) If any utility installation is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the Municipality , in addition to other remedies, may institute in the name of the Municipality any appropriate action or proceeding, whether by legal process or otherwise, to prevent such on, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain correct, or abate such violation 1 to prevent the use of such utility installation, and/or to prevent any illegal act, conduct, business, or use in or about such utility installation.

(C) The Municipal Manager or his designee is authorized to make requests and to issue orders regarding utility installations in the right of way for the purpose of public safety and compliance with this chapter of the Municipality of West Milton Code of Ordinances. The Municipal Manager or his designee is also authorized to conduct visual and external inspections of utility installations in the right of way at any time and shall make efforts to coordinate with the provider responsible for a utility installation for any internal inspection of the relevant equipment.