

ORDINANCE 2021 – 1

AN ORDINANCE OF THE TOWN COUNCIL OF THE MUNICIPALITY OF KINGSTON, LUZERNE COUNTY, PENNSYLVANIA, A HOME RULE MUNICIPALITY, ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE MUNICIPALITY OF KINGSTON

WHEREAS, the Municipality of Kingston (“Municipality”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the Municipality to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the Municipality recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to homes, businesses, and schools within the Municipality; and

WHEREAS, the Municipality recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, the Municipality intends to fully comply with state and federal law to the extent it preempts local municipal control.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Municipality of Kingston that Chapter 110 of the Municipal Code of the Municipality of Kingston shall be established and shall provide as follows:

Section 1 – Purpose and Scope

(A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities and associated utility poles in rights-of-way within the Municipality's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Municipality rights-of-way and the Municipality as a whole.

(B) Intent. In enacting this Chapter, the Municipality is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain Municipality corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;

- (4) limit environmental damage, including damage to trees;
- (5) respect the character of the neighborhoods and other areas in which facilities are installed; and
- (6) facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

(C) Zoning. Applications to collocate a small wireless facility or install or modify an associated utility pole in the rights-of-way shall be treated as a permitted use and exempt from local zoning regulation review. Any other wireless facilities not meeting the definition of a small wireless facility shall be subject to applicable zoning requirements.

(D) Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(E) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the wireless provider shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or State laws or regulations.

Section 2 – Definitions

- (A) "Antenna" means an apparatus designed for the purpose of emitting radiofrequency (RF) signals, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information services.
- (B) "Applicable Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address imminent threats of destruction of property or injury to persons, to the extent not inconsistent with this Chapter.
- (C) "Applicant" means a person or entity that submits a siting application, and the agents, employees, and contractors of such person or entity.
- (D) "Application" means a request submitted by an applicant (i) for a permit to install or collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole associated with a collocated small wireless facility.
- (E) "Municipality" refers to the Municipality of Kingston.
- (F) "Municipality Pole" means a utility pole owned, managed, or operated by or on behalf of the Municipality.
- (G) "Code" means the Municipality of Kingston Code.

- (H) "Collocate" means the mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (I) "Communications service provider" means a cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a Wireless Provider.
- (J) "Day" means calendar day.
- (K) "Emergency" is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.
- (L) "FCC" means the Federal Communications Commission of the United States.
- (M) "Fee" means a one-time charge.
- (N) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (O) "Micro Wireless Facility" means a wireless facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.
- (P) "Permit" means a written authorization required by an Authority to perform an action or initiate, continue, or complete a project.
- (Q) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Municipality.
- (R) "Rate" means a recurring charge.
- (S) "Rights-of-Way" or "ROW" means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Municipality.

- (T) "Small Wireless Facility" means a facility that meets each of the following conditions:
- a. The structure on which antenna facilities are mounted --
 - i. Is 50 feet or less in height, or
 - ii. Is no more than 10 percent taller than other adjacent structures, or
 - iii. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
 - b. Each antenna (excluding associated antenna equipment) are cumulatively no more than three cubic feet in volume; and
 - c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
 - d. The facility does not require antenna structure registration under 47 CFR Part 17.
 - e. The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
 - f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).
- (U) "Utility pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying or providing lateral support to electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting. Such term shall not include structures supporting only wireless facilities.
- (V) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (W) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

- (X) "Wireless provider" means a wireless infrastructure provider or a wireless services provider.
- (Y) "Wireless services" means any services, whether at a fixed location or mobile, provided to the public using wireless facilities.
- (Z) "Wireless services provider" means a person who provides wireless services.
- (AA) "Wireless support structure" means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

Section 3 – Permitted Use; Application and Fees

- (A) Permit Required. No person shall place a small wireless facility or associated utility pole in the ROW, without first filing an application and obtaining a permit therefore, except as otherwise provided in this Chapter.
- (B) Application. All applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the Municipality. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.
- (C) Application Requirements. An application shall be made by the wireless provider or its duly authorized representative, and shall contain the following:
 - (1) The wireless provider's name, address, telephone number, and e-mail address;
 - (2) The applicant's name, address, telephone number, and e-mail address, if different than the wireless provider, and its interest in the work;
 - (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
 - (4) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
 - (5) A site plan, with sufficient detail to show the proposed location of items the applicant seeks to install in the ROW, including any manholes or poles, the size, type, and depth of any conduit or enclosure.

- (6) An attestation that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the Municipality and the applicant agree to extend this period or delay is caused by lack of commercial power at the site.
- (7) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.
- (D) When Application Not Required. An application shall not be required for: (i) routine maintenance; (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height; or (iii) for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code.
- (E) Application Fees. All applications for permits shall be accompanied by a fee of \$500 for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five; and \$1,000 in non-recurring fees for each new associated utility pole.
- (F) Consolidated Applications.
- (1) An applicant may submit a consolidated Application for up to 10 Small Wireless Facilities, if all of the Small Wireless Facilities in the consolidated Application are substantially the same type.
 - (2) If the Municipality denies the application for one or more Small Wireless Facilities, or one or more Small Wireless Facilities, in a consolidated application, the Municipality may not use the denial as a basis to delay the application process of any other Small Wireless Facility in the same consolidated Application.
 - (3) A single permit may be issued for siting and collocating multiple Small Wireless Facilities spaced to provide wireless coverage in a contiguous area.

Section 4 – Action on Permit Applications

- (A) Review of Small Wireless Facility and Utility Pole Applications.
- (1) Within ten days of receiving an initial application, the Municipality will determine and notify the applicant whether the application is materially complete. If an application is materially incomplete, the Municipality will specifically identify the missing documents or information, and the specific rule or regulation creating the obligation to submit such documents or information. The shot clock set forth in subsection (2) shall restart at zero on the date which the applicant submits all the documents and information identified by the Municipality to make the

application complete. If the applicant's supplemental submission fails to make the application complete, and the Municipality notifies the applicant within 10 days of the supplemental submission and clearly and specifically identifies the missing documents or information, the applicable shot clock set forth in subsection (2) shall be tolled until the applicant provides the missing documents and information. The shot clock resumes (the date calculation does not restart) to run on the date when the applicant submits all the documents and information identified by the Municipality to render the application complete.

(2) All applications shall be processed on a nondiscriminatory basis, and the Municipality shall approve or deny an application for: (i) collocation of Small Wireless Facility on an existing structure within 60 days of receipt of the application, or (ii) within 90 days for applications to deploy a Small Wireless Facility using a new structure.

(3) An applicant and the Municipality may enter into a written agreement to toll the time periods set forth in Subsection (2).

(4) If the Municipality fails to issue a decision on an application for a Small Wireless Facility within the required time periods set forth in Section 4(A)(2) of this Chapter, it shall constitute a "failure to act" within the meaning of 47 U.S.C. § 332(c)(7)(B).

(5) A Municipality may deny a proposed collocation of a small wireless facility or installation or modification of a utility pole only if the proposed application:

- (a) Materially interferes with the safe operation of traffic control equipment.
- (b) Materially interferes with sight lines or clear zones for transportation or pedestrians.
- (c) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (d) Fails to comply with reasonable and nondiscriminatory spacing requirements that apply to other communications service providers and electric utilities in the ROW and that concern the location of ground-mounted equipment and new Utility Poles. Such spacing requirements shall not prevent a small wireless facility from serving any location.
- (e) Fails to comply with applicable codes.
- (f) Fails to comply with the requirements in Section 5 of this Chapter.

- (6) The Municipality must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Municipality denies an application. The applicant may cure the deficiencies identified by the Municipality and resubmit the application within 30 days of the denial without paying an additional application fee. The Municipality shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (B) Permit Scope and Effect. Installation, modification, or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the Municipality and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to:
- (1) Undertake the installation, modification, or collocation; and
 - (2) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of not less than ten years, which the Municipality must renew for equivalent durations so long as the facilities are in compliance with the criteria set forth in subsection 4(A)(3) and section 5 of this Chapter.
- (C) Authority Granted: No Property Right or Other Interest Created. A permit from the Municipality authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

Section 5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

- (A) Technical Requirements. Small wireless facilities and utility poles installed to support small wireless facilities in the ROW shall comply with the following requirements:
- (1) Height of new small wireless facilities. New small wireless facilities in the ROW may not extend (i) more than ten feet above an existing utility pole in place as of the effective date of this Chapter; or (ii) for small wireless facilities on a new utility pole, above the height permitted for a new utility pole under this Chapter.
 - (2) Height of new or modified utility poles installed to support small wireless facilities. Each new or modified utility pole installed in the ROW shall not exceed the greater of (i) ten feet in height above the tallest existing utility pole in place as of the effective date of this Chapter located within 500 feet of the new pole in the same ROW; or (ii) 50 feet above ground level.

- (3) Maximum Size. The small cell facility must conform to the size and height limitations as defined for a small cell facility in this Chapter.
 - (4) Utility Poles. Utility pole installations, modifications, and replacements relating to small wireless facility collocations shall be fabricated from material having a degree of strength capable of supporting the small wireless facility, and shall be capable of withstanding wind forces and ice loads in accordance with applicable standards. A modification, installation, or replacement shall be securely bound in accordance with applicable engineering standards.
 - (5) Color. Small wireless facilities shall be the color for the antenna and related equipment that is consistent with or most blends into the wireless support structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.
 - (6) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with the version of the National Electrical Code and National Electrical Safety Code adopted by the Municipality and in force at the time of installation. In no event shall wiring and cabling serving the small wireless facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility, or telephone utility.
 - (7) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small wireless application.
 - (8) Grounding. The small wireless facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Municipality regarding grounding of wireless facilities.
 - (9) Signage. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small wireless facility shall not have signs installed thereon.
 - (10) Access. Wireless providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures, and small wireless facilities in the ROW at all times for purposes consistent with this Chapter.
- (B) Other Requirements. A wireless provider that seeks to collocate small wireless facilities or install or modify a utility pole supporting small wireless facilities shall be subject to the following requirements:

- (1) Small wireless facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small wireless facilities shall not be installed directly over any water, sewer, or reuse main or service line.
- (2) New utility poles installed to support small wireless facilities shall be made of the same or similar material as existing poles in the immediate area.
- (3) Any tree-disturbing activity necessary for the installation or collocation of small wireless facilities and utility poles installed to support them shall comply with the Municipality's Shade Tree Ordinance.
- (4) Small wireless facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small wireless facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.
- (5) A wireless provider shall repair, at its sole cost and expense, any damages, including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to Municipality streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW. The wireless provider shall restore such areas, structures, and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.
- (6) Small wireless facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable.
- (7) No small wireless facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the Municipality Code of Ordinances.

(C) Undergrounding Provisions. To the extent doing so would not result in an effective prohibition under federal law, the applicant shall comply with requirements that prohibit communications service providers from installing structures in the ROW in areas designated solely for underground or buried cable and utility facilities where the Municipality has required all cable and utility facilities other than Municipality poles and attachments to be placed underground by a date certain that is three months prior to the submission of the application.

The Director of Public Works [OR other Municipality Manager or Director] may authorize the replacement of Municipality poles in the designated area upon good cause shown, as determined by the Director.

- (D) Waivers. A wireless provider may seek a waiver of the requirements in this section 5, which may be granted by the Director of Public Works [OR other Municipality Manager or Director], upon good cause shown, as determined by the Director. Such waivers shall be granted in a nondiscriminatory manner.

Section 6 – Removal, Relocation, or Modification of Small Wireless Facility in the ROW

- (A) Notice. Within ninety days following written notice from the Municipality, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any small wireless facilities or utility pole for which it has a permit hereunder whenever the Municipality has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Municipality improvement in or upon, or the operations of the Municipality in or upon, the ROW.
- (B) Emergency Removal or Relocation of Facilities. The Municipality retains the right to cut or move any small wireless facilities or utility poles located within the ROW, as the Municipality may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the Municipality shall notify the wireless provider and provide it an opportunity to move its small wireless facilities or utility poles prior to cutting or removing them, and in all circumstances shall promptly notify the wireless provider after cutting or removing a small wireless facility or utility pole.
- (C) Abandonment of Facilities. The Municipality may require a wireless provider to remove an abandoned small wireless facility or utility pole permitted hereunder within 180 days of abandonment. Should the wireless provider fail to timely remove the abandoned small wireless facility or utility pole, the Municipality may remove the small wireless facility or utility pole to be removed and may recover the actual cost of such removal from the wireless provider. A small wireless facility or utility pole shall be deemed abandoned at the earlier of the date that the wireless provider indicates in any way that it is abandoning the small wireless facility or utility pole, or the date that is 180 days after the date that the small wireless facility or utility pole ceases to be used, unless the wireless provider gives the Municipality reasonable evidence that it is diligently working to place the small wireless facility or utility pole back in service.

Section 7 – Eligible Facilities Request Section

(A) Definitions (to add to general wireless definitions)

- (1) "Base Station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, except that a base station does not include or encompass a Tower or any equipment associated with a Tower, as defined herein. Base Station includes:
 - a. Equipment associated with wireless communications services such as private broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Municipality under this Article, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
 - b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration, that, at the time the relevant application is filed with the Municipality under this Article, has been reviewed and approved under the applicable state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Base Station does not include any structure that, at the time the relevant application is filed with the Municipality under this Article, does not support or house equipment described in sub-paragraphs a. and b. above.
- (2) "Eligible Facilities Request" means a request for modification of an existing Tower that does not substantially change the physical dimensions of such Tower involving (i) collocation of new transmission equipment, (ii) removal of transmission equipment, or (iii) replacement of transmission equipment.
- (3) "Eligible Support Structure" means any Tower as defined at 47 U.S.C. § 153, provided it exists at the time the relevant application is filed with the Municipality under this Article.
- (4) "Substantial Change" means a modification that substantially changes the physical dimensions of an eligible support structure and that meets any of the following criteria:
 - a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is

greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

- b. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- c. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- d. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- e. It entails any excavation or deployment outside the current wireless communications facility site;
- f. It would defeat the concealment elements of the eligible support structure; or
- g. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (1)-(4) above.

- (5) "Transmission Equipment" means equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(B) Application. The Municipality shall prepare, and from time to time revise and make publicly available, an application form which shall be limited to the information necessary for the Municipality to consider whether an application is an eligible facilities request. Such information may include, without limitation, whether the project:

- (1) Results in a substantial change; or
- (2) Violates a generally-applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

(C) Type of Review. Upon receipt of an application for an eligible facilities request pursuant to this Section, the Municipality shall review such application to determine whether the application so qualifies

(D) Timeframe for Review. Subject to the tolling provisions of subsection (D)(3) below, within sixty (60) days of the date on which an applicant submits a complete application under this Section, the Municipality shall act on the application unless he or she determines the application is not covered by this subsection.

(E) Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by agreement of the Municipality and applicant, or in cases where the Municipality determines the application is incomplete:

- (1) To toll the timeframe for incompleteness, the Municipality must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;
- (2) The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the Municipality's notice of incompleteness; and
- (3) Following a supplemental submission, the Municipality will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information, or the application will be deemed complete as of the date of the supplemental submission. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection (D)(1). In the case of a second or subsequent notice of incompleteness, the Municipality is not required

to specify missing information or documents that were not delineated in the original notice of incompleteness.

(F) Failure to Act. In the event the Municipality fails to act on a request seeking approval for an eligible facilities request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. In such event, the grant becomes effective when the applicant notifies the Municipality in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(G) Interaction with Telecommunications Act 47 U.S.C. § 332(c)(7). If the Municipality determines the applicant's request is not an eligible facilities request as defined in this Article, the presumptively reasonable timeframe under 47 U.S.C. § 332(c)(7), as prescribed in FCC Order 14-153, part VI ("Shot Clock" order), will begin to run from the issuance of the Municipality's decision that the application is not a covered request. To the extent such information is necessary, the Municipality may request additional information from the applicant to evaluate the application in accordance with the review process set forth in 47 U.S.C. § 332(c)(7).

Section 8 – Collocation on Municipality Poles

Applications to collocate small wireless facilities on Municipality poles shall be processed under Section 4 of this Chapter. Applications shall not be denied unless they fail to meet the requirements of Sections 4 and 5, or unless there is insufficient capacity that cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the Municipality, to be reimbursed by the wireless provider.

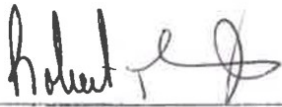
Section 9 – Effective Date

This Ordinance shall take effect thirty (30) days after its passage, approval, and publication.

INTRODUCED at a regular meeting of the Town Council of the Municipality of Kingston held virtually pursuant to Act 15 of 2020 during the COVID 19 pandemic on the 1st day of February, 2021.

ADOPTED at a regular meeting of the Town Council of the Municipality of Kingston, Luzerne County, Pennsylvania held virtually pursuant to Act 15 of 2020 during the COVID 19 pandemic on the 1st day of March, 2021. The effective date of this Ordinance shall be as provided by Kingston Municipal Charter section 213.

FOR THE TOWN COUNCIL OF THE
MUNICIPALITY OF KINGSTON


By: 
Robert Thompson, Jr., President

ATTEST:


Julie Norton, Secretary

Date: March 1, 2021

APPROVED:


Paul J. Roberts, Jr., Mayor

Date: March 1, 2021