

ARTICLE 11

WIRELESS TELECOMMUNICATIONS FACILITIES

SECTION 1101

PURPOSE AND INTENT OF WIRELESS TELECOMMUNICATION

REGULATIONS: The purpose of this Article is to regulate the placement, construction, and modification of wireless telecommunication facilities and their support structures in order to protect the public health, safety, and morals, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications industry in the Miami Valley Region. Specifically, the purposes of this Article are:

- 1101.01 To direct the location of various types of wireless telecommunication facilities into appropriate areas of Spring Valley Township;
- 1101.02 Protect residential areas and land uses from potential adverse impacts of wireless telecommunication facilities;
- 1101.03 Minimize adverse visual impacts of wireless telecommunication facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- 1101.04 Promote and encourage shared use/co-location wireless telecommunication antenna(s)/platform(s) as a primary option rather than construction of additional single-use wireless telecommunication towers;
- 1101.05 Avoid potential damage to adjacent properties caused by wireless telecommunication facilities by ensuring such structures are soundly designed, constructed, modified, are appropriately maintained, and are fully removed when the use ceases;
- 1101.06 To the greatest extent feasible, ensure that wireless telecommunication facilities are compatible with surrounding land uses; and
- 1101.07 To the greatest extent feasible, ensure that wireless telecommunication facilities are designed in harmony with natural settings and in a manner consistent with development patterns.

This article shall not unreasonably discriminate among providers of functionally equivalent services nor shall it prohibit or have the effect of prohibiting the provision of personal wireless services. Any requests for authorization to place, construct, or modify personal wireless service facilities shall be acted upon as specified in this Resolution, Section 1001.2, after the request has been duly filed with the Spring Valley Township Zoning Inspector. Any decision to deny a request to place,

construct, or modify wireless telecommunication facilities shall be in writing and supported by substantial evidence contained in a written record. This Article shall not regulate the placement, construction, and modification of wireless telecommunication facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions.

SECTION 1102

DEFINITIONS: For the purposes of this Article, the following terms, phrases, words, and their derivations shall have the meanings given herein. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their customary meaning as defined in *Webster's New World Dictionary*.

- 1102.1 Applicant: Any person that applies for a permit pursuant to this Article.
- 1102.2 Application: The process by which an applicant submits a request and indicates a desire to be granted a zoning certificate under the provisions of this Article. An application includes all written and graphic documentation, verbal statements and representations, in whatever form or forum, made by an applicant to Spring Valley Township concerning such a request.
- 1102.3 Co-location: The use of a wireless telecommunication tower by more than one wireless telecommunications provider.
- 1102.4 Engineer: Any engineer licensed by the State of Ohio.
- 1102.5 FAA: The Federal Aviation Administration and any legally appointed designated or elected agent or successor.
- 1102.6 FCC: The Federal Communications Commission and any legally appointed designated or elected agent or successor.
- 1102.7 Personal Wireless Services (PWS): Including cellular telephone, Personal Communication Services (PCS), other mobile radio services, and any other FCC licensed wireless common carriers.
- 1102.8 Township: The Township of Spring Valley.
- 1102.9 Wireless Telecommunication Antenna: Any panel, whip, dish, or other apparatus designed for communications through the sending

and/or receiving of electromagnetic waves, excluding any support structure other than brackets/platforms.

- 1102.10 Wireless Telecommunication Equipment Shelter: The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.
- 1102.11 Wireless Telecommunication Facility: A facility consisting of the equipment, tower, antenna, and structure involved in receiving wireless telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land based telephone lines. However, the term wireless telecommunication facilities shall not include:
 - a. Any satellite earth station antenna two meters in diameter or less and personal television antennas.
 - b. Antennas used by amateur radio operators.
- 1102.12 Wireless Telecommunication Tower: Including but not limited to self-supporting lattice, guyed, or monopole, which elevate the wireless telecommunication antenna and may include accessory transmission and receiving equipment. The term tower shall not include amateur radio operator's equipment, as licensed by the FCC.
 - a. Lattice Tower framework or structure of crossed metal strips typically resting on three or more members constructed vertically to which antennas are affixed.
 - b. Monopole, a support structure constructed to a single self-supporting hollow metal tube anchored to a foundation.

SECTION 1103

LOCATION OF WIRELESS TELECOMMUNICATION FACILITIES

- 1103.1 Prohibited: Subject to Section 1106, wireless telecommunication facilities in locations not specifically listed in this Article shall not be permitted, not shall any zoning certificate be issued therefore.
- 1103.2 Permitted Uses In Districts Zoned for Residential Use: A-10, A-5, E-3, E-1, RS-2, RS-3, RT-3, RM-8, R-MH, and PUD-R
The erection, construction or replacement of a wireless telecommunication antenna(s) on a lawfully existing wireless telecommunication tower and with the necessary wireless telecommunication equipment shelter may be a permitted use as a co-location only on an existing wireless telecommunication tower.
- 1103.3 Accessory Uses: A-10, A-5, E-3, E-1, RS-2, RS-3, RT-3, RM-8, R-MH, and PUD-R

- A. An antenna for a wireless telecommunication facility may be attached to an existing residential building four or more stories in height or to an existing nonresidential structure, excluding residential accessory structures, subject to the following conditions:
 - 1. Maximum Height. The antenna shall not extend more than ten feet above the roof of the existing building or top of the existing structure, subject to Section 1103.4 A (3).
 - 2. Separate Wireless Telecommunication Equipment Shelter. If the applicant proposes to locate the wireless telecommunications equipment in a separate wireless telecommunications equipment shelter, not located in or attached to the building, the equipment shelter shall comply with the accessory building regulations of the district and shall be located below existing grade.
 - 3. Vehicular Access. Vehicular access to the equipment shelter shall be via the existing circulation system and subject to Section 1104.16.
- B. Failure to meet the above conditions the applicant can apply for a conditional use.

1103.4 Conditional Uses: A-10, A-5, E-3, E-1, RS-2, RS-3, RT-3, RM-8, R-MH, and PUD-R

- A. Wireless telecommunication facility is permitted as a conditional use upon a parcel in districts zoned for residential uses, subject to the following conditions.
 - 1. The minimum parcel size shall comply with the parcel requirements of the district.
 - 2. The minimum setback from the nearest lot line to the base of the wireless telecommunication tower shall be a 1:1 ration in height from the nearest lot line and any structure. The equipment shelter shall comply with minimum setback requirements for the established Zoning District.
 - 3. The maximum height shall be less than 200 feet from the existing grade to the highest point of the wireless telecommunication facility.
 - 4. There is no feasible co-locatable tower site available for the applicant's antenna(s) and related facilities within the geographic area to be served as provided by a Radio Frequency (RF) Engineer and subject to Section 1104.8.
 - 5. As a condition of issuing a conditional zoning certificate to construct and operate a wireless telecommunication facility in the Township, the owner/operator is required to allow and agree to such co-location until said tower has reached full antenna capacity. In no event shall fewer than two additional antenna platforms of equal loading capacity to the owner's/operator's antenna platform be provided for two additional wireless telecommunication providers. Agreement to this provision must be included in the applicant's lease with the landowner, if different from the owner/operator of the tower. Written documentation must be presented to the Zoning Inspector evidencing

that the landowner of the property on which the tower is to be located has agreed to the terms of Section 1103.4 A (5) for co-location as well as all other applicable requirements, regulations and standards set forth in Article 11 and the parcel owner understands the taxing implications that the wireless telecommunication facility may have on the parcel.

6. The Spring Valley Township Board of Zoning Appeals may require a bond for tower removal and site restoration.

SECTION 1104

GENERAL REGULATIONS: The regulations and conditions set forth in this Article shall apply with respect to location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a wireless telecommunication facility and all appurtenances thereto. Except as otherwise provided in this Article, all wireless telecommunication facilities shall comply with the following standards:

- 1104.1 All towers shall be of a monopole design, as opposed to a lattice design. Lattice towers existing on the effective date of this provision, however, may be rebuilt as lattice towers of the same height and volume for the purpose of increasing the structural loading capacity of the tower in order to provide for co-location of additional antennas.
- 1104.2 Only one wireless telecommunication tower shall be located on a parcel, unless otherwise approved by the Spring Valley Township Board of Zoning Appeals.
- 1104.3 No telecommunication facility shall be located within a designated 100 year flood plaid as depicted on the maps published by the Federal Emergency Management Agency.
- 1104.4 No telecommunication facility shall be located within a “wetland” as defined by federal law.
- 1104.5 A telecommunication facility shall not be mounted on a building or structure listed on a federal, state, or local historic register.
- 1104.6 A report shall be prepared and submitted by a qualified and licensed professional engineer and shall provide proof of compliance with all applicable federal, state, and county regulations. The report shall include a detailed site plan as required by Section 1001.1 of this Resolution; a detailed description and construction plans of the wireless telecommunication tower, antenna(s), equipment building, and appurtenances as well as the tower’s structural loading capacity to support at least three antenna platforms of equal loading capacity; and shall verify that radio frequency (electromagnetic) emissions are in compliance with the regulations established by the FCC, and a photograph of the proposed site prior to construction.

1104.7 For applications for wireless telecommunication towers and related facilities, as opposed to applications for co-location of antennas and related equipment building(s), the applicant shall demonstrate that the proposed site is the most appropriate location for the telecommunication tower, equipment building, and appurtenances. The applicant shall submit a study by a qualified and RF Engineer comparing all potential host sites for the proposed facility to the subject site. The study shall include a description of such sites and a discussion of the ability or inability of the alternative sites to host a wireless telecommunication facility. Reasons for excluding an alternative site from consideration may include, but are not limited to, the following:

- a. Written documentation of the property owner's refusal to locate a telecommunication facility on the site;
- b. Topographic limitations on the site;
- c. Adjacent impediments that would obstruct transmission;
- d. The physical constraints on the site that would preclude construction; and
- e. Other technical limitations including a violation of federal, state, or county regulations.

1104.8 The shared use (i.e. co-location) of pre-existing wireless telecommunication towers is preferred to the construction of new towers. For applications for wireless telecommunication towers and related equipment building(s). The applicant shall submit a report by a qualified RF engineer inventorying existing wireless telecommunication facility sites within a two mile radius of the proposed site outlining the reasons each existing site may or may not be used as an alternative for co-location. The applicant shall demonstrate that co-location is not feasible for the following reasons:

- a. Written documentation of the owner's refusal to allow co-location on the existing tower;
- b. The proposed antenna/platform would exceed the structural capacity of existing towers, provided the existing tower cannot be reinforced, modified, or replaced to accommodate the proposed antenna/platform at a reasonable cost;
- c. The proposed antenna/platform would cause interference impacting the usability of other existing equipment at the tower or building as documented by a qualified RF Engineer and the interference cannot be prevented at reasonable cost;
- d. Existing or approved towers and buildings cannot accommodate the planned antenna/platform at a height necessary to function reasonably as documented at a height necessary to function reasonably as documented by a qualified RF Engineer;
- e. The applicant shall demonstrate that to facilitate co-location on an identified potential wireless telecommunication tower site that they have offered to allow the owner/operator of the other wireless

telecommunication tower to co-locate antenna(s) on another wireless telecommunication tower owned by the applicant within the area, if such a wireless telecommunication tower exists and that space is unavailable on the wireless telecommunication tower for co-location on reasonably reciprocal terms and the offer was not accepted.

f. Co-location would violate federal, state, or county regulations.

- 1104.9 The applicant shall submit a plan documenting how the telecommunication facility will be maintained on the site in an ongoing manner and this document shall be a condition of approval.
- 1104.10 An antenna or the tower top shall be illuminated with a red light unless other requirements are mandated by the FAA.
- 1104.11 A fence approved in design by the Spring Valley Township Board of Zoning Appeals and not less than six feet in height shall fully enclose the base of the wireless telecommunication facility including anchors for guy wires. Gates shall be locked at all times when the facility is unattended by an agent of the wireless telecommunication provider.
- 1104.12 A landscaped buffer area of not less than 15 feet in depth shall be placed between the fence surrounding the wireless telecommunication facilities and the public rights-of-way and any adjacent properties with a direct view of the facilities, other than the tower itself. The 15 foot landscaped buffer shall be of hardy evergreen shrubbery not less than six feet in height and of a density to obstruct the view. The landscaping shall be continuously maintained and promptly restored, if necessary.
- 1104.13 No Advertising sign(s) shall be permitted anywhere on a wireless telecommunication tower, equipment building and appurtenances or on the site.
- 1104.14 A permanent sign with a minimum size of two square feet and a maximum size of six square feet shall be posted on the site as well as the emergency telephone number of the owner/operator, base elevation, Long./Lat., tower height, tip elevation, of each platform. The owner/operator shall also provide the Spring Valley Township Fire Department, and the Greene County Sheriff's Office with information on who to contact, the event of an emergency.
- 1104.15 There shall be no outdoor storage of equipment or other items on the site except during the facility construction period and to supply emergency power to the facility only during a power outage.
- 1104.16 The access driveway to the wireless telecommunication facility shall, whenever feasible, be provided along the circulation driveways of the

existing use on the parcel, if any. Where use of an existing driveway is not feasible, the driveway to the site shall be a minimum of 14 feet in width and shall be setback a minimum of 20 feet from the nearest side or rear lot line. This driveway shall meet the load limitations and standards of the Spring Valley Township Fire Department.

- 1104.17 A wireless telecommunication tower shall be painted a color to minimize its visibility, approved by the Spring Valley Township Board of Zoning Appeals unless otherwise required by the FCC or the FAA.
- 1104.18 If at any time all the uses of the wireless telecommunication facility are discontinued for one year, said facility shall be deemed abandoned. The Zoning Inspector shall notify the applicant in writing and advise that the facility must be reactivated within 20 days or it must be dismantled, removed from the site and the site restored within 60 days to a condition reasonably similar to the condition at the time of the issuance of the zoning certificate. This shall be done at the cost of the owner/operator.
- 1104.19 The owner/operator of the wireless telecommunication facility shall, by January 7th of every year from the date of issuance of the zoning certificate, file a declaration with the Zoning Inspector, including verification that the radio frequency (electromagnetic) emissions are in compliance with the current FCC regulations, with the appropriate fee(s) as to the continuing operation of every facility which is subject to Article 11.
- 1104.20 After issuance of a zoning certificate to construct a wireless telecommunication facility, the applicant shall commence construction within 180 days and shall complete construction within one year or the zoning certificate shall expire.
- 1104.21 The maximum cumulative total size of all equipment buildings accessory to a wireless telecommunication tower or antenna on a parcel shall be 600 square feet and its maximum height shall be 15 feet from building grade, if not feasible to be placed below grade. All wireless telecommunication equipment shelters shall be configured to appear as one building, on any one parcel.
- 1104.22 There shall be no tower erected between a public road and the principal building on a parcel, which is nearest to the public right of way.
- 1104.23 A wireless telecommunication tower, antenna, equipment shelter, and appurtenances shall comply with all of the regulations for the zoning district in which it is located, except as may otherwise be specified in Article 11 of this Resolution.

1104.24 The applicant shall demonstrate to the Township that it is licensed by the FCC.

SECTION 1105 FEES

1105.1 Application Fee: The fees for application for zoning certificate as required by this Article shall be as specified by the Spring Valley Township Board of Trustees.

1105.2 Reimbursement of Expenses: The applicant for a wireless communication facility shall be responsible for all expenses incurred by the Township for any technical and/or engineering services deemed necessary by the Spring Valley Township Zoning Inspector, the Spring Valley Township Board of Zoning Appeals, or the Spring Valley Township Board of Trustees to perform the reviews and/or inspections set forth in this Article which are not covered by the application fee established by the Spring Valley Township Board of Trustees.

SECTION 1106 PUBLIC UTILITY EXEMPTION

1106.1 In the event a wireless telecommunications facility is to be owned or principally used by a public utility engaged in the provision of wireless telecommunication services, the regulations of this Article do not apply when the proposed location of the wireless telecommunication facility is in an area of the Township which is not zoned for residential use(s). The applicant of the proposed wireless telecommunication facility must file a written application with the Spring Valley Township Zoning Inspector supported in writing by substantial evidence that the wireless telecommunication facility will be owned or principally used by a public utility engaged in the provision of wireless telecommunication services. The applicant must also demonstrate by substantial evidence that it possesses a sufficient degree of the following attributes associated with being a public utility to be a “public utility” for purposes of this exemption:

- a. Whether the applicant devotes an essential good or service to the general public, which has a legal right to demand or receive this good or service;
- b. Whether the applicant provides its good or service to the public indiscriminately and reasonably;
- c. Whether the applicant has an obligation to provide the good or service, which cannot be arbitrarily or unreasonably withdrawn;
- d. Whether the applicant conducts its operations in such a manner as to be a matter of public concern;
- e. Whether the good or service is vital;

- f. Whether there is a lack of completion in the local marketplace for the good or service;
- g. Whether there is regulation by a government authority and the extent of that regulation; and
- h. Whether the applicant possesses the power of eminent domain.

1106.2 This Article does not apply in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility, whether publicly or privately owned, or the use of land by any public utility, whether publicly or privately owned, or the use of land by any public utility, for the operation of its business. However, subject to Ohio Revised Code 519.211 (B) and Section 1106 of this Resolution, the provisions of this Article shall apply with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a wireless telecommunication facilities.

1106.3 If the Spring Valley Township Zoning Inspector determines to deny the applicant such “public utility” status, he/she shall do so in writing, and state the reasons therefore. Any determination by the Spring Valley Township Zoning Inspector that the applicant is not a public utility engaged in the provision of wireless telecommunications services may be appealed to the Spring Valley Township Board of Zoning Appeals within 20 days pursuant to the procedures set forth in Section 1003 of this Zoning Resolution. The decision of the Spring Valley Township Board of Zoning Appeals shall be the final determination on the request, unless overturned by the Court of Common Pleas.

1106.4 In the event a wireless telecommunication facility is proposed to be located in the Township, in an area zoned for residential use, and is to be owned or principally used by a public utility engaged in the provision of wireless telecommunication services, the public utility shall be exempt from the requirements of this Zoning Resolution and a certificate of exemption will be issued if it meets all of the criteria in a, b, and c below, as follows:

- a. All of the requirements of Section 1106.1 through 1106.3 are met;
- b. The public utility provides each of the following by certified mail:
 - 1. Written notice to each owner of property, as shown on the County Auditor’s current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the wireless telecommunication facility is proposed to be constructed and to any owner and resident whose residential dwelling is within 100 feet of a proposed

wireless telecommunication facility, stating all of the following in clear and concise language:

- a) The public utility's intent to construct the wireless telecommunication facility; and
 - b) A description of the property sufficient to identify the proposed location; and
 - c) That no later than 15 days after the date of mailing of the notice, any such property owner/occupant may give written notice to the Spring Valley Township Board of Trustees requesting that the provisions of this Zoning Resolution apply to the proposed location of the wireless telecommunication facility. If the notice to a property owner is returned unclaimed or refused, the applicant shall mail the notice regular mail. The failure of delivery of the notice does not invalidate the notice; and
2. Written notice to the Spring Valley Township Board of Trustees of the information specified in Section 1106.4 b, 1); and
- c. If the Spring Valley Township Board of Trustees receives notice from a property owner under Section 1106.4 b, 1, c, within the time specified in that Section, or if a Trustee makes an objection to the proposed location of the wireless telecommunications facility within 15 days after the date of mailing of the notice sent under Section 1106.4, b, 2, the Board of Trustees shall request that the Fiscal Officer of the Township send the person proposing to construct the wireless telecommunications facility is subject to the regulations of this Zoning Resolution. The notice shall be sent no later than 5 days after the earlier of the date the Board of Trustees first receives such a notice from a property owner or the date upon which a Trustee makes an objection. Upon the date of mailing of the notice to the person, the provisions of this Zoning Resolution shall apply to the wireless telecommunications facility without exception. If the Spring Valley Township Board of Trustees, however, receives no notice under Section 1106.4 b, 1, within the time prescribed by that Section or no Trustee has an objection as provided under this Section 1106.4 c, within the time prescribed by this Section, the applicant will be exempt from the regulations of this Zoning Resolution.