

LOWER GWYNEDD TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

BOARD OF SUPERVISORS
ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF LOWER GWYNEDD, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING CERTAIN PROVISIONS OF THE LOWER GWYNEDD TOWNSHIP ZONING CODE TO ADD A NEW CHAPTER 1295A, ENTITLED "SMALL WIRELESS FACILITIES," ADDING PROVISIONS GOVERNING THE INSTALLATION OF SMALL WIRELESS FACILITIES; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND ALSO PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

BE IT ORDAINED AND ENACTED by the LOWER GWYNEDD TOWNSHIP BOARD OF SUPERVISORS (the "Board"), Montgomery County, Pennsylvania, as is hereby ordained and enacted by the authority of the same as follows:

SECTION 1. LEGISLATIVE INTENT. The Board enacts this Article to govern use of public street rights-of-way and municipal poles in accordance with and as limited by Act 50 of 2021, The Small Wireless Facilities Deployment Act ("Act"). The Board recognizes the limitations of the Act on its powers and desires to regulate the public street rights-of-way and municipal poles to the maximum extent allowed by such Act. The Board further desires to limit, to the extent legally permissible, conflicts with other uses of the public street rights-of-way.

SECTION 2. AMENDMENT. Title Six of the Code, entitled "Zoning," is hereby amended by adding the following definitions to Chapter 1250, §1250.04, as follows, incorporated into the existing definitions in alphabetical order:

ADA. The federal Americans with Disabilities Act, as amended, and all regulations adopted to implement such statute.

FCC. Federal Communications Commission or any agency successor thereto.

ONE CALL. The Pennsylvania One Call Act, the Act of December 10, 1974, P.L. 852, as amended, 73 P.S. §176 et seq., and all regulations adopted to implement such statute.

PERSON(S). Any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization, or any agent or subsidiary thereof, or government, or any agency or political subdivision thereof.

RIGHT OF WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public way, public alley, public sidewalk, and any other land dedicated or otherwise designated for the same now or hereafter held by the Township or other governmental entity.

SMALL WIRELESS ACT. The Small Wireless Facilities Deployment Act, the Act of June 30, 2021, P.L. 232, No. 50, 53 P.S. §11704.1 et seq., and as may be amended in the future.

SMALL WIRELESS APPLICANT. A Wireless Provider that submits an application for a Small Wireless Facility.

SMALL WIRELESS APPLICATION. A written application for the installation of a Small Wireless Facility, in the form and including content and information prescribed by the Township.

SMALL WIRELESS FACILITY. The equipment and network components, including antennas, transmitters and receivers, used by a Wireless Provider that meet the following qualifications: (1) Each antenna associated with the deployment is no more than three (3) cubic feet in volume; (2) The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty-eight (28) cubic feet. Any equipment used solely for the concealment of the Small Wireless Facility shall not be included in the calculation of equipment volume under this definition.

TOWNSHIP. Lower Gwynedd Township.

UCC. The Pennsylvania Uniform Construction Code, as adopted and administered by the Township.

UNDERGROUND UTILITY DISTRICT. An area designated by the Township within which poles, overhead wires and associated overhead structures are prohibited.

WIRELESS PROVIDER. A Person who provides wireless infrastructure or a wireless communications service provider using Small Wireless Facilities who/which has been granted a permit pursuant to this Ordinance.

ZONING OFFICER. The Person designated by the Board of Supervisors to administer the Zoning Code.

B. The following sections are added to the new Chapter 1295a. as follows:

§1295a.01. **Permit Application Requirements.** All Persons who desire to install a Small Wireless Facility within a right-of-way, whether by co-location or by the installation of a new utility pole, shall file a Small Wireless Application with the Zoning Officer.

§1295a.02. **Time and Manner of Submission of Applications.** All Small Wireless Application shall be submitted to the Township office, or filed electronically, on a day that the Township office is open to the public and during hours that the office is open to the public. A Small Wireless Application received within one (1) hour of close of business shall be considered filed on the next day that the Township office is open for business.

§1295a.03. **Application Consideration and Permit Issuance.**

A. Within ten (10) business days of receiving a Small Wireless Application, the Township shall determine whether the Small Wireless Application is incomplete. If incomplete, the Township shall provide written notice to the Small Wireless Applicant specifically identifying the missing information. All deadlines contained in this section shall restart upon the Small Wireless Application process.

B. A Small Wireless Application for co-location shall be approved or denied by the Township within sixty (60) days of the receipt of a completed Small Wireless Application.

C. A Small Wireless Application to replace an existing utility pole or install a new utility pole with the Small Wireless Facility attached, shall be approved or denied by the Township within ninety (90) days of receipt of the completed Small Wireless Application.

D. If there are deficiencies, the Township will provide the Small Wireless Applicant with written notice of the basis for denial.

E. The Small Wireless Applicant may cure the deficiencies and resubmit a revised Small Wireless Application within thirty (30) days.

F. The Township shall determine whether all deficiencies have been addressed. The Township will notify the Small Wireless Applicant of approval or denial, within thirty (30) days of the resubmittal.

G. Any resubmittal that addresses or changes other sections, shall afford the Township an additional fifteen (15) days to review the resubmittal and shall trigger an additional application fee to be paid by the Small Wireless Applicant with the resubmittal.

H. Once all requirements of the Act and this Chapter have been met, the Zoning Officer shall issue a permit to authorize installation of the Small Wireless Facility and an invoice for the right-of-way fee.

I. The proposed co-location, the modification or replacement of a utility pole or the installation of a new utility pole with Small Wireless Facilities attached, for which a permit is granted under this Chapter, shall be completed within one (1) year of the permit issuance date.

J. Subject to the permit requirements and the Wireless Provider's right to terminate at any time, the permit shall authorize the operation and maintenance of the Small Wireless Facility and any associated equipment on the utility pole covered by the permit, for a period of five (5) years, which shall be renewed for two additional five (5)-year periods if the permit holder is in compliance with the criteria set forth in this Chapter and the Act, and the permit holder has obtained all necessary consent from the utility pole owner.

§1295a.04. **Design Standards.** All Small Wireless Facilities to be installed and maintained within the right-of-way, shall meet all of the following requirements:

A. The Small Wireless Facility and all associated equipment shall meet the size and height limits of the Act.

B. The Small Wireless Facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way. This shall include, but not be limited to, any interference with compliance with the ADA.

C. A new pole shall not be located within ten (10) feet of an existing driveway or street intersection. A new pole shall not be located within any storm water management facility including, but not limited to, any swale or rain garden. A new pole shall not be located within eighteen (18) inches of the face of the curb.

D. Small Wireless Facility equipment mounted on a pole, shall have a clearance of not less than eighteen (18) feet if located over a cartway and not less than ten (10) feet if not located over a cartway.

E. Ground-mounted accessory equipment, walls, or landscaping shall not be located within any storm water management facility including, but not limited to, any swale or rain garden or within eighteen (18) inches of the face of the curb.

F. A new pole or ground mounted accessory equipment, walls or landscaping shall not be located in an easement extending onto property adjoining the right-of-way, without the written permission of the easement holder.

G. Ground-mounted accessory equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features. Any required electrical meter cabinets shall the screened to blend in with the surrounding area.

H. All underground facilities shall be designed and installed in a manner which will not require the removal or relocation of any storm water management facility or underground utility.

I. If the proposed Small Wireless Facility is to be placed on or near a significant historic building, the Small Wireless Facility and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.

§1295a.05 **Small Wireless Facilities In Underground District.**

A. In any officially designated underground utility district of the Township in which all cable facilities and utility facilities, other than municipal poles and attachments, are required to be placed underground, and in which municipal poles may be replaced, any Person wishing to place a Small Wireless Facility shall also meet any additional requirements of the underground utility district.

B. Persons wishing to place a Small Wireless Facility in an underground utility district may apply for a waiver from the requirements of the underground utility district. After an application for a waiver is received by the Township, the Township shall hold a public hearing on the request for a waiver. In order to be considered, the request for a waiver must include a letter from the owner of the property where the small cell facility is to be placed, consenting to the waiver request.

§1295a.06 Maintenance of Small Wireless Facilities. The Wireless Provider shall maintain the Small Wireless Facility in a manner that meets or exceeds all of the design standards of this Chapter and all UCC standards. If the Small Wireless Facility is the only facility on a pole, the Wireless Provider shall maintain the pole in accordance with this Chapter and all applicable requirements. The Wireless Provider shall remove any graffiti on the Small Wireless Facility, including but not limited to ground-mounted accessory equipment, within thirty (30) days after notice from the Township to do so.

§1295a.07 Damage to Existing Facilities.

A. A Wireless Provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the Wireless Provider or the Wireless Provider's contractors, including installation of the Small Wireless Facility or the failure to properly maintain the Small Wireless Facility, and return the right-of-way in as good of condition as it existed prior to any work being done in the right-of-way by the Wireless Provider or damage resulting from the failure to maintain the Small Wireless Facility. If the Wireless Provider fails to make the repairs required by the Township within thirty (30) days after written notice, the Township may perform those repairs and charge the Wireless Provider the reasonable, documented cost of the repairs plus a penalty of Five Hundred Dollars (\$500.00).

B. The Wireless Provider who has failed to make the required repairs shall not be eligible to receive a new permit from the Township until the Wireless Provider has paid the amount assessed for the repair costs and the assessed penalty or has deposited the amount assessed for the repair costs and the assessed penalty in escrow with the court adjudicating the merits of the dispute.

C. A Wireless Provider shall fully indemnify and hold the Township and its officers, employees and agents harmless against any claims, lawsuits, judgments, costs, liens, expenses or fees or any other damages caused by the act, error or omission of the Wireless Provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing or maintaining Small Wireless Facilities or utility poles within the right-of-way.

§1295a.08 Annual Right-of-Way Fee. In accordance with Section 3(c) of the Act, the Township hereby imposes an annual fee for the use of right-of-way in the amount of Two Hundred Seventy Dollars (\$270.00) per Small Wireless Facility or Two Hundred Seventy Dollars (\$270.00) per new utility pole with a Small Wireless Facility.

The annual fee shall become effective beginning on January 1, 2022, and shall be imposed for each calendar year or portion thereof during which a Small Wireless Facility is located in a right-of-way. The owner of each Small Wireless Facility installed within the Township shall be responsible to pay such right-of-way fee whether or not such provider receives an invoice from the Township. The fee will be due by January 31 of the calendar year for the calendar year to which the fee relates.

A. The failure to pay the annual right-of-way fee shall be a violation of this Chapter and shall be subject to the penalties and remedies in this Chapter.

B. If the annual right-of-way fee is not paid in full by January 31 of the calendar year, a penalty of ten (10%) percent of the annual fee shall be added. If the annual fee plus penalty is not paid in full by March 31 of the calendar year, interest at the rate of one (1%) percent per month shall continue until the annual right-of-way fee, penalty, and interest are paid in full.

C. The annual fee may be adjusted upward by resolution of the Board of Supervisors as authorized by Section 7(c) of the Act.

D. The owner of each Small Wireless Facility installed within a right-of-way on the effective date of this Chapter shall provide the Township with a report identifying each existing Small Wireless Facility identifying the location of such Small Wireless Facility, the dimensions of such Small Wireless Facility, and the date of installation of the Small Wireless Facility. This report shall include the name and contact information for the owner of the Small Wireless Facilities, including the address to send invoices for the annual right-of-way fee and any notices under this Chapter.

E. The owner of each Small Wireless Facility shall provide the Township with up-to-date contact information. If ownership of a Small Wireless Facility changes, the new owner of the Small Wireless Facility shall provide notice and new contact information to the Township within thirty (30) days.

§1295a.09 **Application Fees.** A Small Wireless Applicant for a permit to install a Small Wireless Facility shall include those fees specified in the Township's General Fee Schedule, which may be adjusted upward by resolution of the Board of Supervisors as authorized by Section 7(c) of the Act.

§1295a.10 Removal of Small Wireless Facilities.

A. Within sixty (60) days of suspension or revocation of a permit due to noncompliance with this article or the Act, the Wireless Provider shall remove the Small Wireless Facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.

B. Within ninety (90) days of the end of a permit term or an extension of the permit term, the permit holder shall remove the Small Wireless Facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole.

C. A Wireless Provider which elects to discontinue the use of a Small Wireless Facility shall notify the Township in writing not less than forty-five (45) days prior to the discontinuance of use of the Small Wireless Facility, which notice shall specify when and how the Wireless Provider will remove the Small Wireless Facility and, if applicable, the pole. The Wireless Provider shall complete the removal within forty-five (45) days of the discontinuance of the use of the Small Wireless Facility. A permit issued under this Article for a Small Wireless Facility which is voluntarily removed shall expire upon the removal of the Small Wireless Facility.

§1295a.11 Removal if use is discontinued or abandoned.

A. If a Small Wireless Facility is discontinued for a period of one hundred twenty (120) days or is abandoned without notice from the owner, it shall be considered abandoned and the Township may remove it at the owner's expense if the Township provides written notice of its intent to remove under this section and, within thirty (30) days after receipt of such written notice, the owner of the does not reply to the Township, in writing, that the Small Wireless Facility continues to be in operation. Costs for such removal shall be collectible as allowed by law.

B. The Township reserves the right to inspect and to request information from the owner, which the owner shall provide following such request, as to the continued use of the operator's Small Wireless Facility within the right-of-way.

C. The Township reserves the right (unless prohibited by law) to require the owner of the Small Wireless Facility to provide financial security to the Township sufficient to cover the costs of removal of the Small Wireless Facility if such use is discontinued or abandoned. The Small Wireless Small Wireless Applicant shall submit an estimate of such removal costs to the Township Engineer for review and approval of same. Said financial security shall remain in place until said facility is removed.

§1295a.11 Safety Requirements.

A. Prevention of failures and accidents. Any person who owns or operates a portion of a Small Wireless Facility sited in the public right-of-way shall always employ ordinary and reasonable care and install and maintain it using industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

B. Compliance with Fire Safety and FCC regulations. A Small Wireless Facility, including, but not limited to, wires, cables, fixtures, and other equipment, shall be installed and maintained in compliance with the requirements of any applicable provisions of the National Electric Code and building codes, and in such manner that will not interfere with the use of other property or any existing public/private utilities or public safety systems.

C. Each attachment of wireless facilities should bear a marker or insignia legible at street level identifying the owner of the Small Wireless Facility and contact information.

§1295a.12 Exceptions to applicability. Nothing in this Chapter authorizes the co-location of small wireless facilities on:

A. Property owned by a private party without the written consent of the property owner;

B. Property owned or controlled by a unit of local government that is not located within public rights-of-way without the written consent of the unit of local government. (Local governments are, however, required to authorize the co-location of small wireless facilities on utility poles owned or controlled by the local government or located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses.);

C. A privately owned utility pole or wireless support structure, without the consent of the property owner; or

D. Property owned, leased or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes, without the consent of the affected district.

§1295a.13 Appeals and consistency with state and federal laws.

The appeals process shall be as provided and set forth by state and federal laws, including any rulings issued by the Federal Communications Commission. The provisions contained herein regulating small wireless facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this chapter. To the extent that any of the provisions in this chapter conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances, in which case the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.

§1295a.14 Severability.

The provisions 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 chapter 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 the Board of Supervisors.

§1295a.15 Violations and Penalties.

A. **Violations.** It shall be a violation of this Chapter to do or permit the following:

1. To install a Small Wireless Facility prior to obtaining the permit required by this Chapter.
2. To install a Small Wireless Facility in a manner other than that authorized by the permit.
3. To place any false or misleading information on an application including, but not limited to, incorrectly identifying the right-of-way width, the identity of the owner of a utility pole, the precise location of the utility pole, or the size and location of any proposed or existing equipment.
4. To fail to make any payment required by this Chapter or to make a payment by a means which is later dishonored.
5. To violate any other provision of this Chapter.

B. **Penalties.** Any Person who violates or permits the violation of any provision of this Chapter shall be liable upon summary conviction therefor to fines and penalties of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) plus all costs of prosecution, including attorneys' fees, which costs, fines, fees and penalties may be collected as provided by law. Each day that a violation continues and each Section of this Chapter that is violated constitutes a separate violation.

SECTION 3. SEVERABILITY. The provisions of this Ordinance shall be severable and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as some affect this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately.

SIGNATURES COMMENCE ON THE FOLLOWING PAGE

ENACTED AND ORDAINED by the Lower Gwynedd Township Board of Supervisors this _____ day of _____, 2024.

ATTEST:

***LOWER GWYNEDD TOWNSHIP
BOARD OF SUPERVISORS***

MIMI GLEASON, TOWNSHIP MANAGER

By: _____
DANIELLE A. DUCKETT, CHAIRPERSON

DRAFT

SMALL WIRELESS FACILITIES DEPLOYMENT ACT - ENACTMENT

Act of Jun. 30, 2021, P.L. 232, No. 50

Cl. 66

An Act

Providing for small wireless facilities deployment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Small Wireless Facilities Deployment Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

"Applicable codes." Any of the following:

(1) Uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances that comply with this act.

"Applicant." A communications service provider that submits an application.

"Application." A request submitted by an applicant to a municipality:

(1) for a permit to collocate small wireless facilities; or

(2) to approve the installation, modification or replacement of a utility pole with small wireless facilities attached.

"Cable facility." Buildings, other structures and equipment used by the owner or operator of a cable television system to provide service. As used in this definition, the term "cable system" shall have the meaning given to it in section 602(6) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 522(7)).

"Collocation" or "collocate." To install, mount, maintain, modify or replace small wireless facilities on an existing utility pole or other wireless support structure.

"Communications facility." A set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide a communications service.

"Communications service provider." Any of the following:

(1) A cable operator as defined in section 602(4) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 522(5)).

(2) A provider of information service as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(24)).

(3) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(51)).

(4) A wireless provider.

"Decorative pole." A municipal pole that is specially designed and placed for aesthetic purposes.

"FCC." The Federal Communications Commission.

"Historic district or building." A building that is or a group of buildings, properties or sites that are:

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

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

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

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

"Micro wireless facility." A small wireless facility that:

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

(2) has an exterior antenna no longer than 11 inches.

"Modification" or "modify." The improvement, upgrade or replacement of a small wireless facility or an existing utility pole that does not substantially change, as defined in 47 CFR 1.6100(b)(7) (relating to wireless facility modifications), the physical dimension of the small wireless facility or utility pole.

"Municipality." Any of the following:

(1) A city of the first, second, second class A or third class.

(2) A borough.

(3) An incorporated town.

(4) A township of the first or second class.

(5) A county.

(6) A home rule municipality.

(7) A similar general purpose unit of government

established by the General Assembly.

"Municipal pole." A utility pole owned, managed or operated by or on behalf of a municipality.

"Right-of-way." The area on, below or above a public roadway, highway, street, sidewalk, alley, utility easement or similar property. The term does not include a Federal interstate highway.

"Small wireless facility." The equipment and network components, including antennas, transmitters and receivers, used by a wireless provider that meet the following qualifications:

(1) Each antenna associated with the deployment is no more than three cubic feet in volume.

(2) The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. Any equipment used solely for the concealment of the small wireless facility shall not be included in the calculation of equipment volume under this paragraph.

"Technically feasible." By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its

design or site location can be implemented without a material reduction in the functionality of the small wireless facility.

"Utility facility." Buildings, other structures and equipment owned or operated by a public utility, as defined in 66 Pa.C.S. § 102 (relating to definitions), to provide service.

"Utility pole." A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.

"Wireless facility." As follows:

(1) Equipment at a fixed location that enables wireless service between user equipment and a communications network, including any of the following:

(i) Equipment associated with wireless services.

(ii) Radio transceivers, antennas, coaxial or fiber optic cables, regular and backup power supplies or comparable equipment, regardless of technological configuration.

(2) The term includes a small wireless facility.

(3) The term does not include any of the following:

(i) The structure or improvements on, under or within which the equipment is collocated.

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

"Wireless infrastructure provider." A person authorized by the Pennsylvania Public Utility Commission to provide telecommunications service in this Commonwealth that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures but is not a wireless services provider.

"Wireless provider." A wireless infrastructure provider or a wireless services provider.

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

"Wireless services provider." A person who provides wireless services.

"Wireless support structure." The term shall have the same meaning given to it in the act of October 24, 2012 (P.L.1501, No.191), known as the Wireless Broadband Collocation Act.

Section 3. Use of right-of-way for small wireless facilities and utility poles with small wireless facilities attached.

(a) Applicability.--The provisions of this section shall only apply to activities of a wireless provider within the right-of-way to deploy small wireless facilities and associated new utility poles with small wireless facilities attached.

(b) Exclusive use prohibited.--A municipality shall not enter into an exclusive arrangement with any person for use of the right-of-way for:

(1) collocation; or

(2) the installation, operation, modification or replacement of utility poles with small wireless facilities attached.

(c) Right-of-way rates and fees.--Subject to the fee adjustment requirements under section 7(c), a municipality shall have the right to charge an annual fee for the use of the right-of-way. An annual right-of-way fee shall not exceed \$270 per small wireless facility or \$270 per new utility pole with a small wireless facility unless a municipality demonstrates all of the following:

(1) The annual right-of-way fee is a reasonable

approximation of the municipality's costs to manage the right-of-way.

(2) The municipality's costs under paragraph (1) are reasonable.

(3) The annual right-of-way fee is nondiscriminatory.

(d) Right of access.--

(1) Under the provisions of this act, in accordance with applicable codes, and with the permission of the owner of the structure, a wireless provider shall have the right to perform the following within the right-of-way:

(i) Collocate.

(ii) Replace an existing utility pole or install a new utility pole with attached small wireless facilities.

(2) All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way or obstruct the legal use of the right-of-way by the municipality and utilities.

(e) Size limits.--

(1) Each new or modified small wireless facility installed in the right-of-way shall be installed on an existing utility pole or a new utility pole subject to the following:

(i) The installation of a small wireless facility on an existing utility pole shall not extend more than five feet above the existing utility pole.

(ii) If collocation on an existing utility pole cannot be achieved under section 4(i), a small wireless facility may be installed on a new or replacement utility pole. The maximum permitted height of the facility, which shall include the utility pole and small wireless facility, shall not be taller than 50 feet above ground level.

(2) Subject to the provisions of this act, a wireless provider may collocate or install a new utility pole with small wireless facilities attached that exceeds these height limits by including a height limit waiver request or variances in the application. Height limit waivers or variances shall be processed subject to applicable codes.

(f) Underground district.--A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit communications service providers from placing or installing structures in the right-of-way in an area designated solely for underground or buried cable facilities and utility facilities if the municipality:

(1) Requires all cable facilities and utility facilities, other than municipal poles and attachments, to be placed underground by a date certain that is three months prior to the submission of the application.

(2) Does not prohibit the replacement of municipal poles in the designated area.

(3) Permits wireless providers to seek a waiver of the underground requirements for the installation of a new utility pole to support small wireless facilities. Upon the submission of a request for a waiver by a wireless provider, the municipality may require a public hearing and, with the approval of the property owner, permit a waiver request. Waivers shall be addressed in a nondiscriminatory manner and in accordance with applicable codes.

(g) Historic district or building.--Except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4) (relating to actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared), a municipality may require reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures in a historic district or on historic buildings. Any design or concealment measures may not have the effect of prohibiting any

concealment measures may not have the effect of prohibiting any provider's technology or be considered a part of the small wireless facility for purposes of the size restrictions of small wireless facilities.

(h) Design guidelines.--A municipality may develop objective design guidelines for a small wireless facility regarding the minimization of aesthetic impact in accordance with the following:

(1) The design guidelines shall be technically feasible.

(2) The design guidelines may not have the effect of prohibiting the wireless provider's technology.

(3) The design guidelines may not unreasonably discriminate among wireless providers of functionally equivalent services.

(i) Damage and repair.--A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider or the wireless provider's contractors and return the right-of-way in as good of condition as it existed prior to any work being done in the right-of-way by the wireless provider. If the wireless provider fails to make the repairs required by the municipality within 30 days after written notice, the municipality may perform those repairs and charge the wireless provider the reasonable, documented cost of the repairs plus a penalty not to exceed \$500. The municipality may suspend the ability of an applicant to receive a new permit from the municipality until the applicant has paid the amount assessed for the repair costs and the assessed penalty. The municipality may not suspend the ability of an applicant to receive a new permit that has deposited the amount assessed for the repair costs and the assessed penalty in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(j) Communications services.--The approval of the installation, placement, maintenance or operation of a small wireless facility under this section shall not authorize the provision of any communications services without compliance with all applicable laws or the installation, placement, maintenance or operation of any communications facilities other than wireless facilities and associated utility poles in the right-of-way. Section 4. Permitting process for small wireless facilities and utility poles within right-of-way.

(a) Applicability.--The provisions of this section shall apply to a municipality's permitting of small wireless facilities by a wireless provider or the installation, modification and replacement of utility poles with small wireless facilities attached by a wireless provider within the right-of-way.

(b) Review.--An application under this section shall be treated as a permitted use in all areas of a municipality, except underground districts in accordance with section 3(f), and reviewed by municipal staff for conformance with applicable codes. Such applications shall not be subject to discretionary zoning review, including conditional use or special exception requirements.

(c) Permits.--

(1) A municipality may require an applicant to obtain one or more permits of general applicability to perform the following within the right-of-way:

(i) Collocate, maintain and modify small wireless facilities.

(ii) Replace existing utility poles for collocation.

(iii) Install new utility poles with attached small wireless facilities.

(2) Permits of general applicability shall not apply exclusively to small wireless facilities. A municipality shall receive applications for collocation or for installation,

modification or replacement of utility poles with small wireless facilities attached and process and issue permits, subject to the requirements of applicable codes. The following apply:

(i) A municipality may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the municipality, including reserving fiber, conduit or pole space for the municipality.

(ii) An applicant shall not be required to provide justification for capacity or radio frequency. An applicant may be required to:

(A) Include documentation with an application that includes construction and engineering drawings, demonstrates compliance with the criteria specified under subsection (f) and includes all necessary approvals from the pole owner.

(B) Self-certify that the filing and approval of the application is required by the wireless provider to provide additional capacity or coverage for wireless services. Nothing in this subsection shall be construed to permit a municipality to require an applicant to submit information about an applicant's business decisions with respect to its service, customer demand for service or quality of service.

(C) Include documentation showing compliance with design guidelines consistent with section 3(h).

(d) Completed application.--Within 10 business days of receiving an application, a municipality must determine and notify the applicant in writing whether the application is incomplete. If an application is incomplete, the notice must specifically identify the missing information. The processing deadline shall restart at zero on the date the applicant provides the missing information. The processing deadline may be tolled by agreement of the applicant and the municipality.

(e) Deadlines.--An application shall be processed on a nondiscriminatory basis and deemed approved if the municipality fails to approve or deny the application within 60 days of receipt of a complete application to collocate and within 90 days of receipt of a complete application to replace an existing utility pole or install a new utility pole with small wireless facilities attached. A permit associated with an application deemed approved under this subsection shall be deemed approved if the municipality fails to approve or deny the permit within seven business days after the date of filing the permit application with the municipality unless there is a public safety reason for the delay.

(f) Denial.--

(1) A municipality may deny an application under this section only if any of the following apply:

(i) The small wireless facility materially interferes with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.

(ii) The small wireless facility fails to comply with applicable codes.

(iii) The small wireless facility fails to comply with the requirements specified under this act.

(iv) The applicant fails to submit a report by a qualified engineering expert which shows that the small wireless facility will comply with applicable FCC regulations.

(2) Within the time frame established under subsection

(e), the municipality shall document the basis for a denial, including the specific provisions of applicable codes on which the denial was based, and send the documentation to the applicant within five business days of the denial.

(3) The applicant may cure the deficiencies identified by the municipality and resubmit the application within 30 days of receiving the written basis for the denial without being required to pay an additional application fee. The municipality shall approve or deny the revised application within 30 days of the application being resubmitted for review or the resubmitted application shall be deemed approved 30 days after resubmission. Any subsequent review shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other sections of the application that were not previously denied, the municipality shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

(g) Consolidated application.--An applicant seeking to collocate within the jurisdiction of a single municipality shall be allowed at the applicant's discretion to file a consolidated application for collocation of multiple small wireless facilities as follows:

(1) The consolidated application does not exceed 20 small wireless facilities.

(2) The denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same consolidated application.

(3) A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period in a municipality with a population of less than 50,000. If a municipality with a population of less than 50,000 receives more than one consolidated application or 20 single applications within a 45-day period, the processing deadline shall be extended 15 days in addition to the processing deadline specified under subsection (d) to allow the municipality to complete its initial review under subsection (d).

(4) The following apply:

(i) For the purpose of counting the number of small wireless facilities each applicant has before a single municipality at a given time, small wireless facilities and poles that a wireless provider applicant has requested a third party to deploy and that are included in a pending application by the third party shall be counted as pending requests by the wireless provider applicant.

(ii) An application tolled under paragraph (3) shall count towards the total number of applications included in a consolidated application unless the application is withdrawn by the applicant. As the processing of applications is completed, the municipality shall begin processing previously tolled applications in the order in which the tolled applications were submitted, unless the applicant specifies a different order.

(h) Time limit for work.--The proposed collocation, the modification or replacement of a utility pole or the installation of a new utility pole with small wireless facilities attached for which a permit is granted under this section shall be completed within one year of the permit issuance date unless the municipality and the applicant agree in writing to extend the period.

(i) Utility poles.--When applying to install a new utility pole under this act, the municipality may require the wireless provider to demonstrate that it cannot meet the service reliability and functional objectives of the application by

reliability and functional objectives of the application by collocating on an existing utility pole or municipal pole instead of installing a new utility pole. The municipality may require the wireless provider to self-certify that the wireless provider has made this determination in good faith and to provide a documented summary of the basis for the determination. The wireless provider's determination shall be based on whether the wireless provider can meet the service objectives of the application by collocating on an existing utility pole or municipal pole on which:

- (1) The wireless provider has the right to collocation.
- (2) The collocation is technically feasible and would not impose substantial additional cost.
- (3) The collocation would not obstruct or hinder travel or have a negative impact on public safety.

(j) Approval.--Approval of an application authorizes the applicant to:

(1) Collocate on an existing utility pole, modify or replace a utility pole or install a new utility pole with small wireless facilities attached as identified in the initial application.

(2) Subject to the permit requirements and the applicant's right to terminate at any time, operate and maintain small wireless facilities and any associated equipment on a utility pole covered by the permit for a period of not less than five years, which shall be renewed for two additional five-year periods if the applicant is in compliance with the criteria set forth in this act or applicable codes consistent with this act and the applicant has obtained all necessary consent from the utility pole owner.

(k) Removal of equipment.--

(1) Within 60 days of suspension or revocation of a permit due to noncompliance with this act or applicable codes consistent with this act, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.

(2) Within 90 days of the end of a permit term or an extension of the permit term, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant's wireless facilities and associated equipment are the only facilities on the utility pole.

(l) Moratorium prohibited.--A municipality may not institute, either expressly or de facto, a moratorium on:

- (1) filing, receiving or processing applications; or
- (2) issuing permits for:

- (i) collocation;
- (ii) modification or replacement of utility poles to support small wireless facilities; or
- (iii) installation of new utility poles to support small wireless facilities.

(m) When applications not required.--

(1) A municipality shall not require an application for:

- (i) Routine maintenance or repair work.
- (ii) The replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller and still qualify as a small wireless facility.

(iii) The installation, placement, maintenance, operation or replacement of micro wireless facilities that are strung on cables between existing utility poles by or for a communications service provider authorized to occupy

the right-of-way, in compliance with the National Electrical Safety Code.

(2) A municipality may require a permit to perform work within the right-of-way for the activities under paragraph (1) or subsection (c), if applicable for work that involves excavation, closure of a sidewalk or closure of a vehicular lane. Permits shall be subject to the requirements provided in this act or applicable codes consistent with this act.

(n) Application fees.--Subject to the fee adjustment requirements under section 7(c), a municipality shall have the right to charge an application fee for the review of a permit application and plans submitted for the work to be done within the right-of-way. A municipality may charge a one-time application fee of up to the following:

(1) Five hundred dollars for an application seeking approval for no more than five collocated small wireless facilities and up to \$100 for each collocated small wireless facility beyond five.

(2) One thousand dollars for an application seeking approval of a small wireless facility that requires the installation of a new or replacement utility pole.

Section 5. Access to municipal poles within right-of-way.

(a) Applicability.--The provisions of this section shall apply to activities of the wireless provider within a right-of-way.

(b) Exclusive use prohibited.--A municipality may not enter into an exclusive arrangement with any person for the right to collocate on municipal poles.

(c) Collocation.--A municipality shall allow collocation on municipal poles using the process required under this act and applicable codes unless the small wireless facility would cause structural or safety deficiencies to the municipal pole, in which case the municipality and applicant shall work together for any make-ready work or modifications or replacements that are needed to accommodate the small wireless facility. All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way.

(d) Rates.--Subject to the fee adjustment requirements under section 7(c), a municipality shall not charge a wireless provider a fee to collocate on municipal poles.

(e) Implementation and make-ready work.--

(1) The rates, fees and terms and conditions for the make-ready work to collocate on a municipal pole must be nondiscriminatory, competitively neutral and commercially reasonable and must comply with this act.

(2) The municipality shall provide a good faith estimate for any make-ready work necessary to enable the municipal pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. A municipality may require replacement of the municipal pole only if the municipality demonstrates that the collocation would make the municipal pole structurally unsound.

(3) The municipality shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work on a nonreplacement municipal pole shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including replacement, shall not exceed actual costs or the amount charged to other similarly situated communications service providers for similar work and shall not include any consultant fees or expenses that are charged on a contingency basis.

(f) Future use.--A municipality may reserve space on an

existing municipal pole for future public safety or transportation uses in a documented and approved plan as adopted at the time an application is filed. A reservation of space shall not preclude collocation, the replacement of an existing utility pole or the installation of a new utility pole. If the replacement of a municipal pole is necessary to accommodate collocation and the reserved future use, the wireless provider shall pay for the replacement municipal pole and the municipal pole shall accommodate the future use.

Section 6. Local authority.

Subject to the provisions of this act and applicable Federal and State laws and regulations, nothing in this act shall be construed to:

(1) Limit or preempt the scope of a municipality's zoning, land use, planning, streets and sidewalks, rights-of-way and permitting authority as it relates to small wireless facilities.

(2) Grant the authority to a municipality to exercise zoning jurisdiction over the design, engineering, construction, installation or operation of a small wireless facility located in an interior structure or on the site of a campus, stadium or athletic facility not owned or controlled by the municipality. Nothing in this act authorizes the Commonwealth or any municipality to require small wireless facility deployment or to regulate wireless services.

Section 7. Implementation.

(a) Ordinances.--A municipality may adopt ordinances that comply with this act and shall amend existing ordinances as necessary to comply with this act. If a municipality does not adopt an ordinance that complies with this act within 60 days of the effective date of this section, applications seeking permits to collocate, modify or replace existing utility poles or install new utility poles shall be processed in compliance with this act. A municipality shall not require a wireless provider to enter into an agreement to implement this act. Nothing in this subsection shall be construed to prohibit an agreement between a municipality and a wireless provider to implement this act if nondiscriminatory and entered into voluntarily.

(b) Agreements.--All agreements between municipalities and wireless service providers that are in effect on the effective date of this act shall remain in effect, subject to any termination provisions in the agreements. When an application is submitted after the effective date of this act, a wireless provider may elect to have the rates, fees, terms and conditions established under this act apply to the small wireless facility or utility pole installed after the effective date of this act.

(c) Rate or fee adjustments.--

(1) If the FCC adjusts its levels for fees for small wireless facilities, a municipality may adjust any impacted rate or fee under sections 3(c), 4(n) or 5(d), on a pro rata basis, and consistent with the FCC's adjustment.

(2) If, in a final adjudication not subject to further appeal or to review by the United States Supreme Court, a Federal court reviewing Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, et al., Declaratory Ruling and Third Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133 (released September 27, 2018), reverses or repeals the rates outlined in that FCC order, then the monetary caps under sections (3)(c), (4)(n) and (5)(d) may increase 3% annually beginning January 1, 2021, at the discretion of a municipality.

Section 8. Indemnification.

Except for a wireless provider with an existing agreement to occupy and operate in a right-of-way, a wireless provider shall fully indemnify and hold the municipality and its officers

fully indemnify and hold the municipality and its officers, employees and agents harmless against any claims, lawsuits, judgments, costs, liens, expenses or fees or any other damages caused by the act, error or omission of the wireless provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing or maintaining small wireless facilities or utility poles within the right-of-way. A wireless provider shall not be required to indemnify for an act of negligence or willful misconduct by the municipality, its elected and appointed officials, employees and agents.

Section 9. General requirements for uses of rights-of-way.

The following apply:

(1) Structures and facilities deployed by a wireless provider under this act shall be constructed, maintained and located in a manner as to not obstruct, endanger or hinder the usual travel or public safety on a right-of-way, damage or interfere with other utility facilities located within a right-of-way or interfere with the other utility's use of the utility's facilities located or to be located within the right-of-way.

(2) The construction and maintenance of structures and facilities by the wireless provider shall comply with the 2017 National Electrical Safety Code and all applicable laws, ordinances and regulations for the protection of underground and overhead utility facilities.

(3) An applicant or the applicant's affiliate shall ensure that a contractor or subcontractor performing construction, reconstruction, demolition, repair or maintenance work on a small wireless facility deployed under this act meets and attests to all of the following requirements:

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

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

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

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

(v) Has completed a minimum of the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the small wireless facility.

Section 10. Construction.

(a) Obligations.--Nothing in this act shall be construed to impact, modify or supersede any construction standard, engineering practice, tariff provision, collective bargaining agreement, contractual obligation or right, Federal or State law or regulation relating to facilities or equipment owned or controlled by an electric distribution company or its affiliate, a telecommunications carrier, an electric cooperative or an independent transmission company that is not a wireless provider.

(b) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Electric distribution company." As defined in 66 Pa.C.S. § 2803 (relating to definitions).

"Facilities." As defined in 66 Pa.C.S. § 102 (relating to definitions).

"Telecommunications carrier." As defined in 66 Pa.C.S. § 3012 (related to definitions).

Section 11. Effective date.

This act shall take effect in 60 days.