PEQUEA TOWNSHIP
LANCASTER COUNTY, PENNSYLVANIA
ORDINANCE NO. 218-2023

AN ORDINANCE REGULATING SMALL WIRELESS FACILITIES WITHIN THE TOWNSHIP, ESTABLISHING AN APPLICATION PROCEDURE FOR THE IMPLEMENTATION OF SMALL WIRELESS FACILITIES, AND ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE

WHEREAS, the Township of Pequea is a municipality organized and existing under the laws of the Commonwealth of Pennsylvania, including but not limited to the Second-Class Township Code, and;

WHEREAS, the Legislature of the Commonwealth vests the Township of Pequea with the power and authority to make and adopt all such ordinances, bylaws, rules, and regulations not inconsistent with the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania, and all laws of this Commonwealth; and

WHEREAS, Act 50 of 2021 was recently enacted to provide for deployment of Small Wireless Facilities in the Commonwealth of Pennsylvania and allows for local regulations of certain designs and district placement, authorizes a municipality to collect a fee for the use of the public right-of-way; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Pequea, County of Lancaster, Commonwealth of Pennsylvania, as follows:

SECTION 1: INTENT

The Pequea Township Board of Supervisors enacts this Ordinance to regulate small wireless communication facilities within the Township, in accordance with requirements set forth in Act 50 of 2021, the Small Wireless Facilities Deployment Act. The Board of Supervisors 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 purpose of this Ordinance is to establish criteria for applications to install and/or co-locate small wireless facilities within the Township, and to ensure that small wireless facilities are property constructed, maintained, and removed once no longer in use.

SECTION 2: DEFINITIONS

ACT – The Small Wireless Facilities Deployment Act, 53 P.S. §11704.1 et seq, and as may be amended in the future.

APPLICANT – A communications service provider that submits an application to install a new small wireless facility, and/or co-locate an existing small wireless facility.

APPLICATION – A request submitted by the Applicant to the Township for a permit to collocate an existing small wireless facility or to approve the installation, modification, or replacement of a utility pole with small wireless facilities.

BOARD OF SUPERVISORS – The Board of Supervisors of Pequea Township, Lancaster County, Pennsylvania.

CODE ENFORCEMENT OFFICER – The person designated by the Township Board of Supervisors to administer this Ordinance and all other relevant ordinances in effect.

FCC – The Federal Communications Commission.

SMALL WIRELESS FACILITY – The equipment and network components, including antennas, transmitters, and receivers used by a wireless provider.

TOWNSHIP – Pequea Township, Lancaster County, Pennsylvania.

UCC – The Pennsylvania Uniform Construction Code.

All words and phrases not defined herein shall have the meaning as set forth in Section 2 of the Act.

SECTION 3: PERMIT APPLICATION REQUIREMENTS

All persons or entities who desire to install a small wireless facility within a right-of-way shall file an application in writing for a permit with the Township Code Enforcement Officer. This application process shall be required for co-location of existing small wireless facilities and for the installation of new small wireless facilities.

All applications must contain the following information:

(a) A written application form identifying the name of the applicant, contact information for the applicant, the name and contact information who prepared the application, and a description of whether the applicant is proposing a new small wireless facility or co-location of an existing utility pole.

(b) Location of all portions of the proposed small wireless facility, including all components of the small wireless facility

(c) If the applicant is proposing co-location on an existing small wireless facility, the current owner of the utility pole.

(d) A report prepared by a qualified engineer demonstrating that the small wireless facility will comply with all FCC regulations, as well as all applicable township, state, and federal regulations. This report must identify the person or persons who prepared the report, as well as their qualifications.

(e) Plan showing the proposed small wireless facility installation sealed by a professional engineer which shall contain a certification that after installation of the facility, any sidewalk, curb, or curb cuts impacted by the small wireless facility will comply with the ADA. After installation of the small wireless facility. The plan shall meet all the following requirements and include all of the following information:

(1) Existing right-of-way width, sidewalk, curbing, and cartway with sufficient information to demonstrate that the small wireless facility will be located completely within the existing public street right-of-way and will not interfere with the safe operation of traffic control equipment, sight lines, or clear zones for vehicles or pedestrians.

(2) Location of all storm water management facilities within the public street right-of-way including swales, inlets, rain gardens, and pipes, with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing storm water management facilities.

(3) Location of all utility facilities within the public street right-of-way including but not limited to public water and sewer facilities, including all hydrants and manholes with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing utility facilities.

(f) Where the application proposes co-location of an existing utility pole which is not a municipal pole, written permission from the owner of the existing utility poll.

(g) The fee as established by this Ordinance.

SECTION 4: <u>APPLICATIONS</u>

A. All applications shall be submitted to the Township office. The Code Enforcement Officer shall review the application for completion within the time periods established in the Act and, if incomplete, shall notify the applicant in accordance with the Act. The Code Enforcement Officer shall review and act upon the application in accordance with the Act.

B. If the application meets all requirements of the Act and this Ordinance, the Code Enforcement Officer shall issue a permit to authorize installation of the small wireless facility and an invoice for the right-of-way fee for the small wireless facility.

C. The proposed co-location, 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 shall be completed within one year of the permit issuance date.

D. The permit shall grant the wireless provider authorization to operate and maintain small wireless facilities and any associated equipment on the utility pole covered by the permit for a period of five years. The permit shall be renewed for two additional five-year

periods if the permit holder is in compliance with all provisions of the Act and this Ordinance.

E. No application shall be required for the following:

(1) Routine maintenance.

(2) Replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height.

(3) 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.

SECTION 5: <u>DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES</u>

All small wireless facilities to be installed and maintained within a right-of-way shall meet all of the following requirements:

A. The small wireless facility and all associated equipment shall meet the size limits and height limits of the Act.

B. The small wireless facility shall be located in such a manner that does not cause any physical or visual obstruction to pedestrian or vehicular traffic.

C. A new pole shall not be located within 10 feet of an existing driveway or street intersection. A new pole shall not be located within any storm water management facility. A new pole shall not be located within 18 inches of the face of the curb.

D. All equipment of the small wireless facility which is mounted on a pole shall have a clearance of not less than 18 feet located over a cartway and not less than 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.

F. A new pole or ground mounted accessory equipment, walls, or landscaping shall not be located on an easement extending onto the lot 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 through the use of landscaping or other decorative features. Any required electrical meter cabinets shall be screened to blend in with the surrounding area. Ground-mounted accessory equipment shall not interfere with access to any driveway or mailbox.

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

SECTION 6: MAINTENANCE OF SMALL WIRELESS FACILITIES

The wireless provider shall maintain the small wireless facility in a manner that meets or exceeds the design standards of this Ordinance. If the wireless facility is the only facility on a pole, the wireless provider shall maintain the pole in accordance with this Ordinance.

SECTION 7: DAMAGE TO EXISTING FACILITIES AND INDEMNIFICATION

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 small wireless facility 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 failure to maintain the small wireless facility. If the wireless provider fails to make the repairs required by the Township within 30 days after written notice, the Township may perform those repairs and charge the wireless provider the reasonable, documented cost of repairs plus a penalty of $500.00.

B. 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 damage 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.

SECTION 8: FEES

A. In accordance with Section 3(c) of the Act, the Township hereby imposes an annual fee for the use of the right-of way in the amount of $270.00 per small wireless facility or $270.00 per new utility pole with a small wireless facility. The annual fee shall become effective beginning on January 1, 2023 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 or each calendar year for the calendar year to which the fee relates. Failure to pay the annual right-of-way fee shall be a violation of this Ordinance and shall be subject to the penalties prescribed herein.

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

C. The annual fee shall be adjusted upward by Resolution of the Board of Supervisors if 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 Ordinance 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 or the annual right-of-way fee and any notices under this Ordinance.

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 30 days.

F. An applicant for a permit to install a small wireless facility shall include the following fees with its application:

(a) For an application seeking approval for between one and five co-located small wireless facilities - $500

(b) For an application seeking approval of more than five co-located small wireless facilities - $500 plus $100 for each co-located small wireless facility beyond five

(c) For an application seeking approval of a small wireless facility that requires the installation of a new or replacement utility pole: $1,000.

(d) The fees established by this Section shall be adjusted upward by resolution of the Board of Supervisors if authorized by Section 7(c) of the Act.

SECTION 9: <u>REMOVAL OF SMALL WIRELESS FACILITIES</u>

A. Within 60 days of suspension or revocation of a permit due to noncompliance with this Ordinance or the Act, 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, after receiving adequate notice and an opportunity to cure any non-compliance.

B. Within 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 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 45 days of the discontinuance of the use of the small wireless facility. A permit issued under this Ordinance for a small wireless facility which is voluntarily removed shall expire upon the removal of the small wireless facility.

SECTION 10: VIOLATIONS AND PENALTIES

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

1. To install a small wireless facility prior to obtaining the permit required by this Ordinance.

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 or 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 Ordinance or to make a payment by a means which is later dishonored.

5. To violate any provision of this Ordinance.

B. 1. If the Township determines that any person has violated this chapter, then a notice of violation shall be issued by the Township describing the violation and a time period for compliance. If the person to whom the notice of violation is issued fails to comply as directed, the Township shall order the discontinuance of noncompliance and may pursue any other enforcement remedies available at law or equity.

2. Any person who has violated the provisions of this chapter, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a judgment of not more than $600 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation.

3. Nothing herein contained shall prevent the Township from taking such other lawful action as is necessary to prevent or remedy any violation

SECTION 11: SEVERABILITY

If any provision, section, sentence, clause, or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or

part of this Ordinance or other Ordinances affected by this Ordinance, it being the intent of Pequea Township that such remainder shall be and shall remain in full force and effect.

SECTION 12: RELATIONSHIP TO OTHER ORDINANCES

All other Ordinances, parts of Ordinances or parts of Resolutions inconsistent herewith shall be and the same expressly are repealed.

SECTION 13: EFFECTIVE DATE

This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors of the Township of Pequea, as provided by law.

Duly ordained and enacted this ___18th___ day of ____January_____, 2023 by the Board of Supervisors of the Township of Pequea, in lawful session duly assembled.

TOWNSHIP OF PEQUEA
LANCASTER COUNTY, PENNSYLVANIA

By: Harry D. Lehman
Chairman

ATTEST:

Kimberly S. Ulaky

Secretary