

TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 2024 - 2

AN ORDINANCE OF THE TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA, TO AMEND THE TULPEHOCKEN TOWNSHIP ZONING ORDINANCE OF 2013, AS AMENDED BY AMENDING SECTION 500 ENTITLED "VC - VILLAGE CENTER DISTRICT", SECTION 600 ENTITLED "RURAL RESIDENTIAL DISTRICT", SECTION 700 ENTITLED "IC - INDUSTRIAL-COMMERCIAL DISTRICT" AND SECTION 800 ENTITLED "EAP - EFFECTIVE AGRICULTURAL PRESERVATION DISTRICT" TO PROVIDE FOR NON-TOWER WIRELESS FACILITIES AND SMALL WIRELESS FACILITIES AS A PERMITTED USE THEREIN, SECTION 1080 ENTITLED "WIRELESS COMMUNICATION FACILITIES", SECTION 1080.2 ENTITLED "NON-TOWER WIRELESS COMMUNICATIONS FACILITIES", TO REQUIRE COMPLIANCE WITH APPLICABLE CODES AND ORDINANCES, REMOVE NON-TOWER WIRELESS FACILITIES AS A PERMITTED USE IN THE PUBLIC STREET RIGHT-OF-WAY, PROVIDING FOR SMALL WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC STREET RIGHT-OF-WAY AND REGULATIONS THEREFOR AND SECTION 300 ENTITLED "DEFINITIONS" TO ADD DEFINITIONS REGARDING WIRELESS COMMUNICATION FACILITIES

WHEREAS, the Pennsylvania Municipalities Planning Code, act of July 31, 1968, as amended, 53 P.S. §§10101 *et seq.*, enables a municipality through its zoning ordinance to regulate the uses of property; and

WHEREAS, the Board of Supervisors of Tulpehocken Township enacted a Comprehensive Zoning Ordinance on April 8, 2013 by Ordinance 2013-4, and subsequently amended it by Ordinance 2014-1 to amend regulations for home occupations and by Ordinance 2017-2 to provide regulations for certain medical marijuana-related uses that have been established pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 *et seq.* and to update regulations for cellular towers in accordance with emerging technology and to amend regulations regarding signage ("the Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended"); and

WHEREAS, the Board of Supervisors of the Township of Tulpehocken desires to amend the Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, regarding wireless communication facilities to allow for non-tower wireless facilities and small wireless facilities in all zoning districts by right, to require compliance with all applicable ordinances and codes, to remove non-tower wireless communication facilities as a permitted use in the right-of-way, to add definitions regarding wireless communication facilities and providing for small wireless communications facilities in the right-of-ways and regulations therefor.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Tulpehocken, Berks County, Pennsylvania, pursuant to the authority conferred by the Municipalities Planning Code, that the following be and is hereby adopted:

SECTION 1. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 300 entitled "Definitions" is hereby amended to alphabetically add the following definitions:

318.9 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.

320.6 DECORATIVE POLE. A municipal pole that is specially designed and placed for aesthetic purposes.

330.1 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.”

335.1 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.

358.1 MUNICIPAL POLE. A utility pole owned, managed or operated by or on behalf of the Township.

378.6 SMALL WIRELESS FACILITY 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.

378.7 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.

387.01 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.

391.1 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.

391.2 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.

396.6.1 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:
 - (a) Equipment associated with wireless services.
 - (b) 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:
 - (a) The structure or improvements on, under or within which the equipment is collocated.
 - (b) The coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.
- (4) The communications antenna(s), support structure, communications equipment building, if any, parking and/or other structures and equipment involved in receiving or transmitting wireless communications or radio signals. A wireless communications facility shall also be considered as a commercial communications facility.

394.6.1 WIRELESS FACILITIES 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.

394.6.2 WIRELESS FACILITIES APPLICATION. A request submitted by an applicant to the Township:

Small Wireless Facility:

- (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.

Non-Tower Wireless Facility:

for a permit to install, construct, modify or replace a non-tower wireless communication facility on a structure or building other than a utility pole and outside the public street right-of-way

Tower Based Wireless Facility:

for a permit to install or construct a tower based wireless communication facility.

394.6.3. **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.

394.6.4. **WIRELESS PROVIDER.** A wireless infrastructure provider or a wireless services provider.

394.6.5. **WIRELESS SERVICES.** Services, whether at a fixed location or mobile, using a licensed or unlicensed spectrum, provided to the public using wireless facilities.

394.6.6. **WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

SECTION 2. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 500 entitled "VC – Village Center District", Section 541 entitled "Permitted Principal Uses" is hereby amended to amend Section 541.18 and to add a new Section 541.19, to read in their entirety as follows:

541.18 Non-Tower Wireless Communication Facilities outside of the public street right-of-way per Section 1080.2(B).

541.19 Small Wireless Communication Facilities within the public street right-of-way per Section 1080.2(C).

SECTION 3. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 600 entitled "Rural Residential District", Section 641 entitled "Permitted Principal Uses" is hereby amended to amend Section 641.12 and to add a new Section 641.13, to read in their entirety as follows:

641.12 Non-Tower Wireless Communication Facilities outside of the public street right-of-way per Section 1080.2(B).

641.13 Small Wireless Communication Facilities within the public street right-of-way per Section 1080.2(C).

SECTION 4. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 700 entitled "IC – Industrial-Commercial District", Section 741 entitled "Permitted Principal Uses" is hereby amended to amend Section 741.32 and to add a new Section 741.35, to read in their entirety as follows:

741.32 Non-Tower Wireless Communication Facilities outside of the public street right-of-way per Section 1080.2(B).

741.35 Small Wireless Communication Facilities within the public street right-of-way per Section 1080.2(C).

SECTION 5. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 700 entitled "EAP - Effective Agricultural Preservation District", Section 831 entitled "Permitted Principal Uses" is hereby amended to amend Section 831.10 and to add a new Section 831.11, to read in their entirety as follows

831.10 Non-Tower Wireless Communication Facilities outside of the public street right-of-way per Section 1080.2(B).

831.11 Small Wireless Communication Facilities within the public street right-of-way per Section 1080.2(C).

SECTION 6. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.1 entitled "Tower-Based Wireless Communications Facilities - General Requirements" is amended to add Letters DD and EE that shall read in their entirety as follows:

DD. Applicable Codes. Conformance and compliance and continual compliance with all other applicable Township Codes or Ordinances including obtaining and maintaining the required permits, including, but not limited to, IFC permits and inspections for liquid fueled generators.

EE. Owners of any non-tower wireless facility shall provide and update annually or any time its changes contact information, including name, title, address, email and telephone number(s) to the Township.

SECTION 7. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(A) entitled "General Requirements for Non-Tower WCF" is hereby amended to amend Section 1080.2(A)(1) to read in its entirety as follows:

(1) Permitted in All Zones Subject to Regulations. Non-tower WCFs are permitted in all zones outside of the public street right-of-way subject to the restrictions and conditions prescribed below and subject to the prior written approval of the

Township. Applicants proposing installations on existing buildings or towers shall submit evidence of agreements and / or easements necessary to provide access to the existing building or tower so that installation and maintenance of the equipment can be accomplished. Non-tower WCFs shall not be permitted within any right-of-way.

SECTION 8. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(A) entitled "General Requirements for Non-Tower WCF" is hereby amended to amend Section 1080.2(A)(2) to add letters e. – i. that shall read in their entirety as follows:

- e. Non-tower WCFs, which are mounted to a building or similar structure, may not exceed a height of fifteen feet (15') above the roof or parapet, whichever is higher, unless the WCF applicant obtains a special exception from the Township's Zoning Hearing Board.
- f. All non-tower WCF applicants must submit documentation to the Township justifying the total height of the non-tower structure. Such documentation shall be analyzed in the context of such justification on an individual basis.
- g. Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.
- h. Noncommercial Usage Exemption. The design regulations enumerated in this paragraph shall not apply to non-commercial antennas and towers (as defined).
- i. Replacement Support Structures. Existing above-ground structures may be replaced with structurally hardened, fitted or reinforced support structures so long as the replacement structure is, in the approval authority's discretion, substantially similar to the existing structure being replaced.

SECTION 9. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(A) entitled "General Requirements for Non-Tower WCF" is hereby amended to amend Section 1080.2(A)(8) to read in its entirety as follows:

- (8) Removal.
 - (a) In the event that use of a non-tower WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:

- i. All abandoned or unused non-tower WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.
 - ii. If the non-tower WCF or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the Township, the non-tower WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
 - iii. Prior to the issuance of permit for construction of a non-tower-based WCF, the applicant shall provide the Township financial security in an amount determined by the Township Engineer for the cost to remove the proposed non-tower-based WCF should it be discontinued and abandoned and the owner fails to remove the WCF in accord with the provisions of this Ordinance. Any costs incurred by the Township in removing the discontinued or abandoned WCF shall be paid from the financial security. If the financial security fails to cover the cost incurred by the Township for removal of the discontinued or abandoned WCF, the owner of the WCF shall be responsible to the Township for the additional costs incurred by the Township.
- (b) The removal and replacement of non-tower WCFs and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of antennae.
 - (c) Any material modification to a wireless communication facility shall require a prior amendment to the original permit or authorization.

SECTION 9. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(A) entitled "General Requirements for Non-Tower WCF" is hereby amended to amend Sections (A)(10), A(11), A(12) and A(13) and to add Section (A)(14) to read their entirety as follows:

- (10) Visual or Land Use Impact. The Township reserves the right to deny an application for the construction or placement of any non-tower WCF based upon visual and/or land use impact.
- (11) Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Township Code or state or federal law. The Township and/or its agents

shall have the authority to enter the property upon which a WCF is located at any time upon reasonable notice to the operator to ensure such compliance.

- (12) Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a non-tower WCF.
- (13) The regulations set forth herein for non-tower wireless communications facilities shall not apply to non-commercial antennas and towers (as defined).
- (14) Owners of any non-tower wireless facility shall provide and update annually or any time its changes contact information, including name, title, address, email and telephone number(s) to the Township.

SECTION 10. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(B) entitled "Substantial Change to Non-Tower WCF" is hereby amended to delete Section 1080.2(B)(4) in its entirety.

SECTION 11. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(B) entitled "Substantial Change to Non-Tower WCF" is hereby amended to identify Section 1080.2(B)(4) as Reserved.

SECTION 12. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 "Supplementary Regulations", Section 1080 entitled "Wireless Communications Facilities", Section 1080.2(C) entitled "Non-Tower WCFs Inside Public Street Right-of-Way" is hereby amended in its entirety to read as follows:

(C) Small Wireless Facilities

- (1) Use of public street right-of-way for small wireless facilities and utility poles with small wireless facilities attached.
 - (a) Permitted in All Zones Subject to Regulations. Small WCFs are permitted in all zones within the public street right-of-way subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township. Applicants proposing installations on existing poles shall submit evidence of agreements and / or easements necessary to provide access to the existing pole so that installation and maintenance of the equipment can be accomplished.
 - (b) Applicability.--The provisions of this section shall only apply to activities of a wireless provider within the public street right-of-way

to deploy small wireless facilities and associated new utility poles with small wireless facilities attached.

- (c) Right-of-way rates and fees.--Subject to the fee adjustment requirements hereunder, the Township shall have the right to charge an annual fee for the use of the public street 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 the Township demonstrates all of the following:
 - (i) The annual right-of-way fee is a reasonable approximation of the Township's costs to manage the right-of-way.
 - (ii) The Township's costs under paragraph (C)(1)(c)(i) are reasonable.
 - (iii) The annual right-of-way fee is nondiscriminatory.
- (d) Right of access.
 - (i) 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:
 - (A) Collocate.
 - (B) Replace an existing utility pole or install a new utility pole with attached small wireless facilities.
 - (ii) All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the public street right-of-way or obstruct the legal use of the right-of-way by the Township and utilities.
 - (iii) All structures and facilities shall not be installed directly in front of any dwelling or where on-street parking is located to ensure a parked vehicle can be safely entered and exited.
- (e) Size limits.
 - (i) Each new or modified small wireless facility installed in the public street right-of-way shall be installed on an existing utility pole or a new utility pole subject to the following:

- (A) The installation of a small wireless facility on an existing utility pole shall not extend more than five feet (5') above the existing utility pole.
 - (B) If collocation on an existing utility pole cannot be achieved hereunder, 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.
- (ii) 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 variances in the application. Variances shall be processed in accordance with the provisions of the Zoning Ordinance.
- (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 Township:
- (i) 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.
 - (ii) Does not prohibit the replacement of municipal poles in the designated area.
 - (iii) Provides for a waiver of the underground requirements for the installation of a new utility pole to support small wireless facilities for which a public hearing may be required and with the approval of the property owner allow for a waiver that 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), the Township 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 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.—The Township may develop objective design guidelines for a small wireless facility regarding the minimization of aesthetic impact in accordance therewith which the Applicant shall comply with or request a modification.
 - (i) Damage and repair.--A wireless provider shall repair all damage to the public street 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 Township within 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 not to exceed \$500. The Township may suspend the ability of an Applicant to receive a new permit from the Township until the Applicant has paid the amount assessed for the repair costs and the assessed penalty. The Township 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.
- (2) Permitting process for small wireless facilities and utility poles within public street right-of-way.
- (a) Applicability.--The provisions of this section shall apply to the Township'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 public street right-of-way.

- (b) Review.--An application under this section shall be treated as a permitted use in all zoning districts of the Township, except underground districts in accordance with this Ordinance, and reviewed by Township staff or appointed officials for conformance with applicable codes. Such applications shall not be subject to discretionary zoning review, including conditional use or special exception requirements.
- (c) Permits.—
 - (i) An Applicant shall submit an application to obtain one or more permits of general applicability to perform the following within the public street right-of-way:
 - (A) Collocate, maintain and modify small wireless facilities.
 - (B) Replace existing utility poles for collocation.
 - (C) Install new utility poles with attached small wireless facilities.
 - (ii) The Township 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.
 - (A) An Applicant shall not be required to provide justification for capacity or radio frequency.
 - (B) An Applicant shall be required to:
 - (1) Include documentation with an Application that includes construction and engineering drawings, demonstrates compliance with the criteria specified hereunder and includes all necessary approvals from the pole owner.
 - (2) 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.
 - (3) Include documentation showing compliance with design guidelines established by the Township.

- (d) Completed application.--Within ten (10) business days of receiving an Application, the Township shall determine and notify the Applicant in writing whether the Application is incomplete. If the Township determines an application is incomplete, it shall advise the Applicant, with specificity, of the missing information. The processing deadline shall restart at zero on the date the Applicant provides the missing information. The Township and Applicant may agree to toll the processing deadline.
- (e) Deadlines.--An Application shall be processed on a nondiscriminatory basis and deemed approved if the Township 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 Township fails to approve or deny the permit within seven (7) business days after the date of filing the permit application with the Township unless there is a public safety reason for the delay.
- (f) Denial.—
 - (i) The Township may deny an Application under this section only if any of the following apply:
 - (A) 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.
 - (B) The small wireless facility fails to comply with applicable codes.
 - (C) The small wireless facility fails to comply with the requirements specified under Act 50 of 2021 of the Commonwealth of Pennsylvania or an amendment thereof.
 - (D) 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.

- (ii) Within the time frame established under subsection (e), the Township 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 (5) business days of the denial.
 - (iii) The Applicant may cure the deficiencies identified by the Township 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 Township 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 Township 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 Township shall be allowed at the Applicant's discretion to file a consolidated application for collocation of multiple small wireless facilities as follows:
- (i) The consolidated application does not exceed twenty (20) small wireless facilities.
 - (ii) 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.
 - (iii) A single applicant may not submit more than one consolidated or twenty (20) single applications in a 30-day period. If the Township 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 (e) to allow the Township to complete its initial review under subsection (e).
 - (iv) The following apply:
 - (A) For the purpose of counting the number of small wireless facilities each applicant has before the

Township 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.

- (B) An Application tolled hereunder 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 are completed, the Township 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 (1) year of the permit issuance date unless the Township and the Applicant agree in writing to extend the period.
- (i) Utility poles.--When applying to install a new utility pole under this Ordinance, the Township may require the wireless provider to demonstrate that it cannot meet the service 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 Township 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:
 - (i) The wireless provider has the right to collocation.
 - (ii) The collocation is technically feasible and would not impose substantial additional cost.
 - (iii) The collocation would not obstruct or hinder travel or have a negative impact on public safety.
- (j) Replacement of Existing Street Light Poles. Except where street light installation is required hereby above, the following standards

apply when replacing an existing street light pole with a combination small WCF and street light pole. Such replacements should only be located where an existing street light pole can be removed and replaced, or at a new location where it has been identified that a street light is necessary. All such replacements shall meet the following standards: (i) replacement street light poles shall be an equal distance from other street light poles based upon the average distance between existing street light poles within the immediate neighborhood; (ii) replacement street light poles shall have at least a 5 year manufacturer's replacement warranty; (iii) replacement street light poles shall be owned by the Township at the Township's discretion; (iv) the centerline of a new small WCF support structure shall be in alignment with existing utility poles where present, or with street trees along the same side of the ROW; (v) pole shall be located a minimum of 12 feet from driveway aprons; (vi) pole shall be sited a minimum of 15 feet away from trees to prevent disturbance within the critical root zone of existing trees having a 6 inch diameter at breast height located in the immediate vicinity.

- (k) Approval.--Approval of an Application authorizes the Applicant to:
 - (i) 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.
 - (ii) 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 (5) years, which shall be renewed for two (2) additional five-year periods if the Applicant is in compliance with the criteria set forth in Act 50 of 2021 or applicable codes consistent with this Ordinance and the Applicant has obtained all necessary consent from the utility pole owner.
- (l) Removal of equipment.—
 - (i) Within 60 days of suspension or revocation of a permit due to noncompliance with this Ordinance or applicable codes consistent herewith, 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.

- (m) An Application for maintenance:—
 - (i) The Township shall not require an application for:
 - (A) Routine maintenance or repair work.
 - (B) 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.
 - (C) 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 public street right-of-way, in compliance with the National Electrical Safety Code.
 - (D) Owner of a wireless facility shall notify the Township of any equipment failures/issues or maintenance work being conducted, particularly for any work located in the Township Public Right-of-Way.
 - (ii) The Township shall require a permit to perform work within the public street right-of-way for the activities hereunder or other applicable subsection for work that involves excavation, closure of a sidewalk or closure of a vehicular lane. Permits shall be subject to the requirements provided herein or applicable codes consistent with Act 50 of 2021.
- (n) Application fees.--Subject to the fee adjustment requirements under this Ordinance, the Township 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 public street right-of-way. The Township may charge a one-time application fee of up to the following:
 - (i) 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.

- (ii) One thousand dollars for an application seeking approval of a small wireless facility that requires the installation of a new or replacement utility pole.
- (3) Access to municipal poles within public street right-of-way.
 - (a) Applicability.--The provisions of this section shall apply to activities of the wireless provider within a right-of-way.
 - (b) Collocation. Collocation on municipal poles using the process required under this Ordinance and applicable codes shall be allowed unless the small wireless facility would cause structural or safety deficiencies to the municipal pole, in which case the Township 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 public street right-of-way.
 - (c) Rates.—A fee shall not be charged to collocate on municipal poles subject to the fee adjustments under section (4)(a).
 - (d) Implementation and make-ready work.—
 - (i) The Township may charge for make ready work to collocate on a municipal pole.
 - (ii) The Township 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.
 - (iii) Make-ready work, including pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.
 - (iv) The Township shall not require more make-ready work than required to meet applicable codes or industry standards.
 - (v) Fees for make-ready work on a nonplacement 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.

- (c) Future use.—The Township 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.
- (4) Rate or fee adjustments.--
- (a) If the FCC adjusts its levels for fees for small wireless facilities, a Township may adjust any impacted rate or fee hereunder, on a pro rata basis, and consistent with the FCC's adjustment.
 - (b) 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 hereunder may increase 3% annually beginning January 1, 2021, at the discretion of the Township.
- (5) 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 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. A wireless provider shall not be required to indemnify for an act of negligence or willful misconduct by the Township, its elected and appointed officials, employees and agents.
- (6) Insurance. The Township shall be named as an additional insured on all applicable insurance policies.
- (7) General requirements for uses of public street right-of-way.

The following apply:

- (a) Structures and facilities deployed by a wireless provider under this Ordinance 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.
- (b) 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.
- (c) 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.

- (d) Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all small WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, relocation requirements for public utilities, and related considerations.
- (e) Any graffiti on the WCF or on any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.
- (f) Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- (g) Relocation or Removal of Facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances.
 - (i) The construction, repair, maintenance or installation of any Township or other public improvement in the public right-of-way.
 - (ii) The operations of the Township or other governmental entity in the public right-of-way.
 - (iii) Vacation of a street or road or the release of a utility easement.
 - (iv) An emergency as determined by the Township.
- (8) Construction of Ordinance. Nothing in this Ordinance 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 (defined in 66 Pa.C.S. § 102) or equipment owned or controlled by an electric distribution company (defined in 66 Pa.C.S. § 2803) or its affiliate, a telecommunications carrier (defined in 66 Pa.C.S. § 3012), an electric

cooperative or an independent transmission company that is not a wireless provider.

- (9) Owners of any small tower wireless facility shall provide and update annually or any time its changes contact information, including name, title, address, email and telephone number(s) to the Township.

SECTION 13. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, shall be and remain unchanged and in full force and effect except as amended, supplemented, and modified by this Ordinance. This Ordinance shall become a part of the Zoning Ordinance upon enactment.

SECTION 14. Repeal of Ordinances. Any ordinance or parts of any ordinance conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provision.

SECTION 15. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect nor impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Board of Supervisors of the Township of Tulpehocken, Berks County, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or words that may have been declared illegal, unconstitutional or invalid.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SECTION 16. Effective Date. This Ordinance shall become effective at the earliest date permitted by law.

ENACTED AND ORDAINED this 2nd day of January 2024.

BOARD OF SUPERVISORS OF TULPEHOCKEN
TOWNSHIP, BERKS COUNTY,
PENNSYLVANIA



BY: Gary A. De...
Chairman

Robert H. Fuchs
Member

Harold B. Zimmerman
Member

ATTEST: Kathryn Judy
Secretary

CERTIFICATE OF ENACTMENT

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2024-2 of Tulpehocken Township, Berks County, Pennsylvania, which was adopted by the Board of Supervisors of said Township at a regular meeting held pursuant to notice as required by law on January 2, 2024.

WITNESS my hand and seal this 2nd day of January, 2024.

Kathryn Judy
Secretary, Tulpehocken Township

