

- 1) Establish basic criteria for applications to install and/or collocate SWF in the public right-of-way;
- 2) Ensure that SWF are appropriately designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
- 3) Preserve the character of the Borough by minimizing the potentially adverse visual impact of SWF through careful design, siting, landscaping, and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;
- 4) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators, and owners of SWF for such facilities; and
- 5) Comply with, and not conflict with or preempt, all applicable state and Federal laws, as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

The intent of this Ordinance is to:

B. INTENT.

The purpose of this Ordinance is to establish procedures and standards, consistent with all applicable federal and state laws, for the consideration, permitting, siting, construction, installation, collocation, modification, operation, regulation, and removal of Small Wireless Facilities (hereinafter also referred to as "SWF") in the public right-of-way of streets and roads consistent with Act 50 of 2021, the "Small Wireless Facilities Deployment Act".

A. PURPOSE.

I. PURPOSE AND INTENT

Parkessburg as follows:

BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of

AN ORDINANCE OF THE BOROUGH OF PARKESBURG, CHESTER COUNTY, PENNSYLVANIA TO ALLOW FOR AND REGULATE SMALL WIRELESS FACILITIES, WITHIN THE BOROUGH OF PARKESBURG

I hereby certify this to be a true and correct copy of the original Ordinance to be considered for passage at a Special Meeting of Borough Council on 6:00 p.m. of Friday, August 27, 2021

[Signature]
 John S. Carnes, Jr., Esquire,
 Solicitor for the Borough of Parkesburg

PARKESBURG BOROUGH
 CHESTER COUNTY, PENNSYLVANIA

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2. APPLICABILITY

A. Subject to the provisions of this Ordinance, an Applicant as defined herein may locate and/or collocate SWF and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public right-of-way.

B. An Applicant shall comply with this Ordinance and any rules, regulations, and design guidelines adopted by the Borough by Resolution of Borough Council that are consistent with this Ordinance for the installation and/or collocation of SWF and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the public rights-of-way, unless otherwise prohibited by state or federal law. * It is expressly understood and contemplated by this Ordinance, that all procedures governing Applications, Permits, Design Standards and any provision establishing any fees or fines for SWF under this Ordinance, whether specified herein or not, are subject to modification by Resolution of the Borough Council.

C. All SWF shall be constructed and maintained so as not to impede or impair the public or the legal use of the public right-of-way by the Borough, the traveling public, or other public utilities.

D. Nothing in this Ordinance precludes the Borough from applying its generally applicable health, safety, and welfare regulations when acting on an application for a permit for a SWF in the public right-of-way.

3. DEFINITIONS

"Act" Shall mean Act 50 of 2021, the "Small Wireless Facilities Deployment Act" passed by the State Legislature as House Bill No. 1621, Printer's No. 1797 signed by Governor Wolf on June 30, 2021, effective 60 days thereafter.

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

"Applicable codes." Shall mean, 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." Shall mean a communications service provider that submits an application and any person or entity that submits an "Application" as defined herein or makes application to the Borough under the terms of this Ordinance.

"Application." Shall mean a request submitted by an Applicant to the Borough:

- (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.

"Borough." Shall mean the Borough of Parkersburg, a Chester County Borough and local government with offices located at 315 W. First Avenue Building #1, Parkersburg, PA, 19365.

"Cable facility." Shall mean 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," shall mean to install, mount, maintain, modify, or replace small wireless facilities on an existing utility pole or other wireless support structure.

"Communications facility." Shall mean 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." Shall mean 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 (47 U.S.C. § 153(51)).
- (4) A wireless provider.

"Decorative pole." Shall mean a municipal pole that is specially designed and placed for aesthetic purposes.

"Design Guidelines." Shall mean those detailed design guidelines, specifications and examples that address, on a nondiscriminatory basis, the design and installation of any small wireless facility to minimize the aesthetic impact of same and protect the public health and safety, insofar

as they do not conflict with any Federal or state law, rule, and regulation. Design Guidelines, including any identified in this Ordinance are expressly subject to modification by Resolution of Borough Council.

"FCC" Shall mean the Federal Communications Commission.

"Historic district or building." Shall mean 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.-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." Shall mean 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." Shall mean 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." Shall mean the Borough of Parkesburg.

"Owner." Shall mean a provider, operator, or owner of SWF (who may also be the Applicant).

"Municipal pole." Shall mean a utility pole owned, managed, or operated by or on behalf of the Borough.

"Resolution." Shall mean a Resolution adopted by the Borough Council of the Borough of Parkesburg in accordance with procedures of the Borough Code.

"Right-of-way." Shall mean 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." Shall mean 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." Shall mean 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." Shall mean 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." Shall mean 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." Shall mean the 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.

This Ordinance expressly authorizes the Borough Council to amend this Application Requirement by Resolution of Borough Council as deemed appropriate by Borough Council.

- 1) The Applicant's name, address, telephone number and email address;
- 2) The Small Wireless Facility owner's name, address, telephone number and

C. Required Application Materials. Unless otherwise required by state or federal law, all Applicants shall submit to the Borough all materials and information associated with each application as outlined below for the application to be considered complete:

B. Permit Required. No person shall occupy or use a small wireless facility within the public right-of-way in the Borough without first applying for and obtaining the required permit from the Borough. This provision shall not be construed to waive any application fee or any other construction or work permit necessary for work in the Borough. While notice to the Borough is required, in accordance with the Act, a permit from the Borough may not be required for routine maintenance or same-size and type replacement of Small Wireless Facilities for previously approved by the Borough that does not interfere with pedestrian or vehicular traffic.

A. Application Required. Any wireless provider seeking to perform the following within the right-of-way: (i) Collocate, maintain and modify small wireless facilities; (ii) Replace existing utility poles for collocation; or, (iii), install new utility poles with attached small wireless facilities - must fill out and obtain a permit on the form supplied by the Borough, in accordance with the requirements of this Ordinance and any amendatory Resolution of Borough Council (establishing the form of the application, the procedures and fees therefore, consistent with applicable law and subject to further modification from time to time by further Resolution of Borough Council).

4. APPLICATION PROCESS

"Wireless support structure." Shall mean the same as is provided to this term in the act of October 24, 2012 (P.L. 1501, No. 191), known as the Wireless Broadband Collocation Act.

"Wireless services provider." Shall mean a person who provides wireless services.

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

"Wireless provider." Shall mean a wireless infrastructure provider or a wireless services provider.

"Wireless infrastructure provider." Shall mean 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.

(1) Structures and facilities deployed by a wireless provider under the Act shall be constructed, maintained, and located in a manner as to not

9) The Applicant must establish that:

employees, and agents. misconduct by the Borough, its elected and appointed officials, shall not be required to indemnify for an act of negligence or willful facilities or utility poles within the right-of-way. The wireless provider or subcontractors while installing, repairing or maintaining small wireless wireless provider or its officers, agents, employees, directors, contractors fees or any other damages caused by the act, error or omission of the harmless against any claims, lawsuits, judgments, costs, items, expenses or indemnity and hold the Borough and its officers, employees and agents provisions to protect the Borough, any wireless provider shall fully and operate in a right-of-way (containing adequate indemnification Except for a wireless provider with a pre-existing agreement to occupy

8) the criteria and requirements of this Ordinance and the Resolutions adopted governing the application procedure and permitting. Construction and engineering drawings demonstrating compliance with

7) work proposed. limited to sub-surface utilities, likely to be affected or impacted by the performed, with special emphasis on those matters, including but not shall be appropriate to the nature and character of the work to be of the Small Wireless Facility. The scope and detail of such description A description of the proposed scope of work for the location or collocation

6) A mapping showing the exact location of the proposed Small Wireless Facility (or facilities in the event of a consolidated application as permitted by the Act) with photo simulations/depictions of the type and style of the proposed Small Wireless Facilities (which should follow the Borough's Design Guidelines).

5) A description of the Small Wireless Facilities being proposed in order for the Borough to verify that the proposed facilities are Small Wireless Facilities and that the dimensions comply with those as established by the Act.

4) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application, and if warranted written authorization for those consultants to speak on behalf of the Applicant.

3) email address, if different from the listed Applicant;

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) The 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 the Act meets and attests to all of the following requirements:

- (i) It maintains all valid licenses, registrations or certificates required by the Federal Government, the Commonwealth or the Borough is necessary to do business or perform applicable work.
- (ii) It maintains 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) It 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) It 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) It has completed a minimum of the United States Occupational Safety and Health Administrator'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.

10) Verification shall be provided establishing that the Small Wireless Facility shall comply with this Ordinance, including all applicable Design Guidelines set forth herein or amended by Resolution of Borough Council;

11) Verification shall be provided of payment of the application fees, including any fees identified by the Borough as appropriate administrative fees justified under the terms of the Act and approved by Resolution of Borough Council and acknowledgment of its continuing annual obligation and duty to complete construction within one (1) year and all other obligations under the Act including other permit fees that may be applicable such as, by way of reference and not limitation, any fees for excavation or restoration of paving in the Borough;

(1) The SWF 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.

(a). The Borough may deny an application only if any of the following apply:

3) Denial (grounds for denial and manner of denial).

2) Deemed Approval Deadlines.--An application shall be processed on a nondiscriminatory basis and deemed approved if the Borough 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 Borough fails to approve or deny the permit within seven business days after the date of filing the permit application with the Borough - unless there is a public safety reason for the delay.

1) Determination of Completeness -- Within 10 business days of receiving an application, the Borough 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 Borough.

D. Procedures and deadlines applicable to Borough review of applications for permits and denial of applications for permits.

14) The Applicant must provide a statement that the Applicant has a Lease, attachment agreement or other authorization from the owner of the support structure proposed for Collocation.

13) Applicant shall supply a copy of an approved Pennsylvania Department of Transportation permit and all documents required by PennDOT as part of the encroachment permit application, if the proposed location is within a PennDOT Right-of-Way; and

12) Evidence shall be provided that Applicant has received any necessary certificate of public convenience and necessity or other required authority from the Federal Communications Commission, or a statement that it is not required;

- (3) A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period. If the Borough receives more than one consolidated application or 20 single applications within a 45-day period, the processing deadline shall
- (2) The Borough's denial of one or more SWF in a consolidated application shall not delay processing of any other SWF in the same consolidated application.
- (1) The consolidated application shall not exceed 20 small wireless facilities.

An Applicant seeking to collocate within the Borough shall be allowed to file a consolidated application for collocation of multiple small wireless facilities subject to the following terms and procedures:

F. Procedures and deadlines applicable with respect to Borough review of consolidated applications.

Applicant may resubmit the application within 30 days of receiving the written basis for the denial without being required to pay an additional application fee in an attempt to cure deficiencies in its initial application. The Borough shall then 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 Borough shall have an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

E. Procedures and deadlines applicable to Borough review of resubmissions by Applicant.

(b). The Borough shall within the time frame established under this Ordinance and the Act, document the basis for a denial, including the specific provisions of applicable codes (including Design Guidelines and the requirements of this Ordinance) on which the denial was based, and send the documentation to the Applicant within five business days of the denial.

- (ii) The SWF fails to comply with applicable codes, including the Design Guidelines and the conditions imposed therein and as set forth in this Ordinance governing applications, permits etc. and consistent with the Act.
- (iii) The SWF fails to comply with the requirements specified under the Act.
- (iv) The Applicant fails to submit a report by a qualified engineering expert which shows that the SWF will comply with applicable FCC regulations.

(1) Time limit for work.--The proposed collocation, the modification or replacement of a utility pole or the installation of a new utility pole with SWF attached for which a permit utility poles.

I. Miscellaneous provisions relating to time limit for work, authorization to establish new Applicant shall remove the SWF 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.

(2) Within 90 days of the end of a permit term or an extension of the permit term, the Applicant shall remove the SWF 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.

(1) Within 60 days of suspension or revocation of a permit due to noncompliance with the Act or applicable codes of the Borough consistent with the Act, the Applicant shall remove the SWF 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.

H. Removal of equipment.

(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 the Act and the Applicant has obtained all necessary consent from the utility pole owner.

The Borough's approval of an application authorizes the Applicant to:

G. Approval of Application.

(4) For the purpose of counting the number of SWF each Applicant has before the Borough at a given time, SWF 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. An application tolled by agreement of the Applicant and the Borough 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 Borough shall begin processing previously tolled applications in the order in which the tolled applications were submitted, unless the Applicant specifies a different order.

be extended 15 days in addition to the processing deadline specified previously to allow the municipality to complete its initial review as previously identified.

is granted under this section shall be completed within one year of the permit issuance date unless the Borough and the Applicant agree in writing to extend the period.

(2) Utility poles.--When applying to install a new utility pole, the Borough will 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 - with such demonstration being addressed based upon the Borough's review of same consistent with any requirements of the Act.

FEEs AND COSTS

A. Rights-of-Way Access Fees.

The Borough shall charge an annual right-of-way fee of \$270 per SWF or \$270 per new utility pole with a small wireless facility. These fees will be identified by the Applicant by pole number and location and will be paid at the time of initial installation and thereafter at the beginning of each following calendar year with payment due on or by January 15th thereof.

B. Application processing costs.

Unless otherwise provided by law, the Borough will charge an application fee for the review of a permit application and plans submitted for work to be done within the right-of-way (subject to revision to address statutory or other permitted increases by Resolution by Borough Council) as follows:

(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.

C. Make-ready Fees.

Fees for make-ready work on a non-replacement municipal pole shall not include costs related to preexisting or prior damage or noncompliance but shall include an application fee and permit and inspection fees. The Application Fee of \$25.00 covers the Borough costs incurred in preparing and supplying the application and filing same and other customarily incidental expenses related thereto. The Borough will charge a Permit Fee of \$150.00 which covers the Borough expenses involved in an initial review of the Application and inspection of the installation (as applicable). Any rejected or incomplete Application or rejected installation will be charged for further review by administrative officials at a minimum rate of \$75.00 per hour or such greater amount as is charged by

In certain circumstances, collocation may not be feasible, and a new pole may need to be installed by the Applicant. In such cases, a SWF located on a new pole shall be separated by 150 feet from any other SWF located upon a pole with the singular purpose (meaning it is not a collocation but another stand-alone SWF pole) - unless the Applicant can provide proof that such separation will affect service and in this instance the Borough shall consider such circumstance in its consideration of any application.

C. Collocation infeasible.

The Borough may reserve space on Borough-Owned Poles for future public safety uses or for Borough electric utility uses. Such reservation may preclude collocation of SWF if the Borough reasonably determines that the Borough's poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Borough-Owned Poles.

B. Borough reservation on Borough poles.

- 1) The installation of a SWF on an existing utility pole shall not extend more than five feet above the existing utility pole.
- 2) If collocation on an existing utility pole cannot be achieved, a SWF may be installed on a new or replacement utility pole. The maximum permitted height of the facility, which shall include the utility pole and SWF, shall not be taller than 50 feet above ground level.
- 3) Subject to the provisions of this Ordinance, a wireless provider may collocate or install a new utility pole with SWF 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.

Each new or modified SWF installed in the right-of-way shall be installed on an existing utility pole or a new utility pole subject to the following:

A. Maximum Height.

6. MAXIMUM HEIGHT, RESERVED SPACE AND PROXIMITY OF SMALL WIRELESS FACILITIES AND ALTERNATE LOCATIONS

any outside consultant undertaking such work on a non-contingency basis based upon the actual costs determined to be greater than \$75.00 per hour. Applicant shall reimburse the Borough for expenses for any reasonable make-ready work if such is required. The Borough shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested SWF, including pole replacement if necessary, within thirty (30) days after receipt of a completed request.

7. GENERAL DESIGN REQUIREMENTS

- A. The Borough has, or shall, adopt Design Guidelines by Resolution of Borough Council and subject to amendment by further Resolution of Borough Council setting forth objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area.
- B. The Design Guidelines may include examples of SWF preferences including visual depictions.
- C. The provisions of this Ordinance shall not limit or prohibit the Borough's discretion to promulgate and make publicly available other information, materials, or requirements in addition to, and separate from the Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- D. All SWF and associated equipment located within the Public Right-of-Way shall be located such that it meets ADA requirements and does not hinder, obstruct, or impede usual pedestrian and vehicular travel.
- E. The Borough shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes.
- F. Current Design Standards (subject to modification by Borough Resolution).

- 1) SWF equipment must be indistinguishable from the support pole or structure to the greatest degree possible using matching colors, textures, and materials. The antennas and related equipment shall be in a color that will provide the most camouflage;
- 2) All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible and micro wireless facilities shall be utilized wherever possible;
- 3) Screening and equipment enclosures shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Equipment shall be concealed as such as possible by blending into the natural and/or physical environment;
- 4) Casting to enclose all wires, antennas, and other small wireless facility equipment may be mounted on top of existing and new poles in a cylinder shape to look like an extension of the pole; and
- 5) Brand logos and other signage are prohibited on all SWF except contact information to be used by workers on or near the SWF and as otherwise required by federal or state law. Signage will be no larger than such size as is necessary to be legible from street level.

6) To the extent that it is possible, and consistent with the Act's right to reserve space on an existing municipal pole and the safety requirements of the Act, the Borough requires that with any installation of an SWF, there shall be established a location on such municipal pole at an approved height to permit the location of a flag for purposes of municipal display which shall be reserved for such use and at said location there shall be installed a flag base for Borough use in accordance with Borough specifications.

7) To the extent that it is possible, all now wiring for SWF shall be placed underground.

8) All SWF installations within the Borough's Historic Preservation District as referenced in §§ 1330-1335 of the Parkersburg Borough Zoning Ordinance of 2015 as amended, and as shown on the Map of Historic District appended thereto shall be subject to requirements of § 1332 thereof to determine whether the procedures of § 1334 thereof apply in any fashion to the installation. The issue shall be considered by the Borough Planning Commission and the Borough Council for any recommendations to preserve the said Historic District with such action and recommendation to be made during the application process under this Ordinance and within the time period applicable as set forth in this Ordinance.

8. GENERAL CONDITIONS AND REQUIREMENTS OF PERMIT APPROVAL.

A. Permit Effect and Duration. The Borough's approval term for collocation or a new pole and the installation of an SWF shall be for a period of twelve (12) months. If construction, installation, or collocation is not begun within such twelve (12) month period, a new application must be submitted for review including any required fee. A permit from the Borough authorizes an Applicant to undertake only certain activities in accordance with the Ordinance and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others.

B. Compliance with all applicable laws and Borough Code. Owner/permittee shall always maintain compliance with all applicable federal, state and local laws, regulations, ordinances or other rules. If state or federal standards and regulations are amended, the owners of any portion of SWF governed by this Ordinance shall bring any facilities and/or structures into compliance with the revised standards and regulations within the time mandated by such amendment or, if no time is mandated, as soon as practicable under the circumstances, but no longer than ninety (90) days. The Borough is not required to provide notice of any amendments in order to trigger this responsibility. Failure to bring SWF into compliance with any revised standards and regulations shall constitute grounds for removal at the Owner's expense.

REMOVAL OF SMALL WIRELESS FACILITIES IF USE DISCONTINUED OR ABANDONED.

9.

H. Relocation for public improvement projects. To the extent that the Borough requires it to do so in the reasonable exercise of its police powers, Owner shall remove and relocate the permitted SWF at Owner's sole expense to accommodate construction of a public improvement project by the Borough.

G. Good condition required. SWF shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. All SWF shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers.

F. Indemnification. Any entity who owns or operates SWF in the Public Right-of-Way shall indemnify, protect, defend, and hold the Borough and its elected officials, officers, employees, agents and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery is sought, to the extent that it is caused by the negligence of the entity who owns or operates the SWF and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing or maintaining facilities in the right-of-way.

E. Contact information for responsible parties. Within 10 days of any changes to any of the contact information provided in the application, the Applicant shall provide notice of the change to the Borough.

D. Relocation or adjustment as requested by the Borough. If requested by the Borough in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an Owner shall relocate or adjust its facilities within the Public Right-of-Way at no cost to the Borough, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.

C. Inspections; emergencies. The Borough or its designee may inspect any portion of SWF in the right-of-way upon reasonable notice to the Owner. The Owner shall cooperate with all inspections. The Borough reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. If circumstances permit, the Borough shall notify the Owner and provide the opportunity to move such facilities, poles, or support structures prior to the Borough doing so, and the Borough shall notify the Owner after doing so.

EXCEPTIONS TO APPLICABILITY.

11.

D. 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 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 Borough within 30 days after written notice, the Borough may perform those repairs and charge the wireless provider the reasonable, documented cost of the repairs plus a penalty not to exceed \$500. The Borough is authorized to suspend the ability of an Applicant to receive a new permit from the Borough until the Applicant has paid the amount assessed for the repair costs and the assessed penalty. The Applicant may avoid such suspension if it files an appeal before a court of competent jurisdiction challenging the merits of the charges and penalty and provides proof to the Borough of such appeal and that it has established an escrow account in the amount assessed for the repair costs and the assessed penalty pending an adjudication of the merits of the dispute by the court.

C. Contact information. Each attachment of wireless facilities should bear a marker or insignia legible at street level, identifying the Owner of the SWF and contact information.

B. Compliance with fire safety and FCC regulations. All SWF, including but not limited to wires, cables, fixtures, and other equipment, shall be installed and maintained in compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of the other property or any existing public/private utilities or public safety systems; and

A. Prevention of failures and accidents. Any person who owns or operates a portion of a SWF 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.

SAFETY REQUIREMENTS.

10.

B. The Borough 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 SWF within the right-of-way.

A. If a SWF is discontinued for a period of 120 days or is abandoned without notice from the Owner, it shall be considered abandoned and the Borough may remove it at the owner's expense. If the Borough 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 SWF does not reply to the Borough in writing that the SWF continues to be in operation. Costs for such removal shall be collectible as allowed by law; and

If any portion of the Ordinance shall be determined to be unconstitutional, illegal or unenforceable, then the portion and only that portion of this Ordinance, which is deemed to be unconstitutional, illegal or unenforceable, shall be severed from the remainder of this Ordinance and all other terms thereof shall remain in full force and effect.

14. SEVERABILITY.

Nothing herein shall prevent the Borough from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations or to address any public safety concern that the Borough has identified.

13. PENALTIES.

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 Ordinance. To the extent that any of the provisions in this Ordinance 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.

12. APPEALS AND CONSISTENCY WITH STATE AND FEDERAL LAWS.

- 1) Property owned by a private party without the written consent of the property owner;
- 2) 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 collocation 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);
- 3) A privately-owned utility pole or wireless support structure, without the consent of the property owner; or
- 4) 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.

A. Nothing in this Ordinance authorizes the collocation of small wireless facilities on:

15. EFFECTIVE DATE.

This Ordinance shall be effective immediately upon adoption.

Enacted and ordained this 27 day of August, 2021.

Sharon L. Wolf
Sharon L. Wolf, Borough Council President

ATTEST:

Rebecca Durnall
Rebecca Durnall, Secretary

John P. Hagan II
Approved this _____ day of _____, 2021

John P. Hagan II, Mayor