

LOWER GWYNEDD TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA

BOARD OF SUPERVISORS  
ORDINANCE NO. 547

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

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

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

**SECTION 2. AMENDMENT.** Title Six of the Code, entitled "Zoning," is hereby amended by adding the following definitions to Chapter 1250, 1250.04, as follows:

A. **§1295a.01. Definitions.** The following definitions shall apply in this Chapter 1295a:

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

**COLLOCATION OR COLLOCATE.** To install, mount, maintain, modify or replace small wireless facilities on an existing utility pole or other wireless support structure.

**FCC.** Federal Communications Commission or any agency successor thereto.

**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.

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

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

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

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

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

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

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

**TOWNSHIP.** Lower Gwynedd Township.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1295a.07 Damage to Existing Facilities.**

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

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

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

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

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

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

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

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

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

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

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

1295a.10      **Removal of Small Wireless Facilities.**

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

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

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



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

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

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

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

**1295a.11 Safety Requirements.**

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

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

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

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

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

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

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

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

**1295a.13** Appeals and consistency with state and federal laws. The appeals process shall be as provided and set forth by state and federal laws, including any rulings issued by the Federal Communications Commission. The provisions contained herein regulating small wireless facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this chapter. To the extent that any of the provisions in this chapter conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances, in which case the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.

**1295a.14** Severability. The provisions of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances, is held invalid, the remaining provisions, subsection, and applications of such chapter to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this Chapter when originally adopted by the Board of Supervisors.

1295a.15      **Violations and Penalties.**

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

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

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

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

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

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

***SIGNATURES COMMENCE ON THE FOLLOWING PAGE***

ENACTED AND ORDAINED by the Lower Gwynedd Township Board of Supervisors this 27<sup>th</sup> day of August, 2024.

ATTEST:

LOWER GWYNEDD TOWNSHIP  
BOARD OF SUPERVISORS

  
\_\_\_\_\_  
MIMI GLEASON, TOWNSHIP MANAGER

By:   
\_\_\_\_\_  
DANIELLE A. DUCKETT, CHAIRPERSON