

BOROUGH OF MOUNT JOY

Lancaster County, Pennsylvania

ORDINANCE NO. 9-21

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF MOUNT JOY BOROUGH, CHAPTER 232, STREETS AND SIDEWALKS, TO ADD A NEW ARTICLE VII, SMALL WIRELESS FACILITIES DEPLOYMENT.

BE AND IT IS HEREBY ORDAINED AND ENACTED by Borough Council of the Borough of Mount Joy, Lancaster County, Pennsylvania, as follows:

Section 1. The Code of Ordinances of Mount Joy Borough, Chapter 232, Streets and Sidewalks, shall be amended by adding a new Article VII, Small Wireless Facilities Deployment, which shall provide as follows:

Article VII

Small Wireless Facilities Deployment

§232-101. Short Title.

This Article shall be known and may be cited as The Mount Joy Borough Small Wireless Facilities and Use of Public Street Right-of-Way Ordinance.

§232-102. Legislative Intent.

Borough Council 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. Borough Council 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. Borough Council further desires to limit, to the extent legally permissible, conflicts with other uses of the public street rights-of-way.

§232-103. Word Usage and Definitions.

- A. Word usage. In interpreting this Article, the singular shall include the plural, and the masculine shall include the feminine and the neuter.
- B. Definitions. All words and phrases not otherwise defined herein shall have the meanings set forth in Section 2 of the Act.

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

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

BOROUGH – The Borough of Mount Joy, Lancaster County, Pennsylvania.

BOROUGH COUNCIL – The governing body of the Borough.

CODE ENFORCEMENT OFFICER – The person designated by Borough Council to administer this Article.

FCC – The Federal Communications Commission or any agency successor thereto.

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

UCC – The Pennsylvania Uniform Construction Code, as adopted and administered by this Borough.

§232-104. 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 an application in writing for a permit with the Code Enforcement Officer. In order to be considered a complete application, such application must include all of the following:

- A. A written application form identifying in detail the name of the applicant and contact information for the applicant and the name and contact information of the person who prepared the application and whether applicant proposes erection of a new utility pole or co-location on an existing utility pole.
- B. Precise location of all portions of the proposed small wireless facility, including pole mounted and ground mounted small wireless facility components.
- C. Identity of the owner of the utility pole if the Applicant proposes co-location on an existing utility pole.
- D. A report by a qualified engineering expert which shows that the small wireless facility will comply with all applicable FCC regulations. The report must identify the person who prepared the report and his or her qualifications.
- E. Construction drawings and supplemental information demonstrating compliance with Section 3 of the Act, the UCC (including as applicable a complete UCC permit application) and this Article.
- F. Plan showing the proposed small wireless facility installation sealed by a professional engineer which shall contain a certification that after installation of the facility any

sidewalk, curb, or curb cuts which may be impacted will comply with the ADA after installation of the small wireless facility. The plan shall meet all of the following requirements and include all of the following information:

1. Existing right-of-way width, sidewalk, curbing, and cartway with sufficient information to demonstrate that the small wireless facility will be located completely within the existing public street right-of-way and will not interfere with the safe operation of traffic control equipment, sight lines, or clear zones for vehicles or pedestrians.
 2. Location of all storm water management facilities within the public street right-of-way including swales, inlets, rain gardens, and pipes, with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing storm water management facilities.
 3. Location of all utility facilities within the public street right-of-way including but not limited to public water and sewer facilities, including all hydrants and manholes with sufficient information to demonstrate that the small wireless facility will be located and installed in a manner that will not interfere with existing utility facilities.
 4. Location of any driveway, mailbox, or utility serving the abutting property.
- G. Where the application proposes co-location on an existing utility pole which is not a municipal pole, written permission from the owner of the existing utility pole.
- H. Where the application proposes installation of a new utility pole, a self-certification that the applicant has determined in good faith that it cannot meet its service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole. This self-certification shall include documentation of the basis of the determination which shall identify all existing utility poles and municipal poles in the vicinity and why they are not suitable.
- I. Where a new pole or excavation for any reason is proposed, an application for a street opening permit meeting all requirements of Article I of this Chapter with street opening permit fee and evidence of compliance with One Call.
- J. The fee established by this Article.

§232-105. Time and Manner of Submission of Applications.

All applications shall be submitted to the Borough office on a day that the Borough office is open to the public and during hours that the office is open to the public. Applications received within one hour of close of business shall be considered filed on the next day that the Borough office is open for business.

§232-106. Consideration of Application and Issuance of Permit.

The Code Enforcement Officer shall review the application for completion within the time periods

required by the Act and, if incomplete, shall notify the applicant in accordance with the Act. The Code Enforcement Officer shall review and act upon the application in accordance with the Act.

- A. If the application meets all requirements of the Act and this Article, the Code Enforcement Officer shall issue a permit to authorize installation of the small wireless facility and an invoice for the right-of-way fee for the small wireless facility.
- B. 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 Article shall be completed within one year of the permit issuance date.
- C. Subject to the permit requirements and the wireless provider's right to terminate at any time, the permit shall grant the wireless provider authorization to operate and maintain small wireless facilities and any associated equipment on the utility pole covered by the permit for a period of five years, which shall be renewed for two additional five-year periods if the permit holder is in compliance with the criteria set forth in this Article and the Act and the permit holder has obtained all necessary consent from the utility pole owner.

§232-107. Design Standards for Small Wireless Communications Facilities.

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 limits 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 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 18 inches of the face of the curb.
- D. All equipment of the small wireless facility which is mounted on a pole shall have a clearance of not less than 18 feet if located over a cartway and not less than 10 feet if not located over a cartway.
- E. Ground-mounted accessory equipment, walls, or landscaping shall not be located within any storm water management facility including, but not limited to, any swale or rain garden or within 18 inches of the face of the curb.
- F. A new pole or ground mounted accessory equipment, walls or landscaping shall not be located an easement extending onto the lot adjoining the right-of-way without the written

permission of the easement holder.

- G. Ground-mounted accessory equipment that cannot be placed underground shall be screened, 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. Ground-mounted accessory equipment shall not interfere with access to any driveway or mailbox.
- 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.

§232-108. 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 Article and all standards of the UCC. If the small wireless facility is the only facility on a pole, the wireless provider shall maintain the pole in accordance with this Article and all applicable requirements. The wireless provider shall remove any graffiti on the small wireless facility, including but not limited to ground-mount accessory equipment, within 30 days after notice from the Borough to do so.

§232-109. Damage to Existing Facilities and Indemnification.

- A. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, directly caused by the activities of the wireless provider or the wireless provider's contractors, including installation of the small wireless facility or the failure to properly maintain the small wireless facility, and return the 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 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 of \$500. The wireless provider who has failed to make the required repairs shall not be eligible to receive a new permit from the Borough until the wireless provider has paid the amount assessed for the repair costs and the assessed penalty or 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.
- B. A wireless provider shall fully indemnify and hold the Borough 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.

§232-110. Annual Right-of-Way Fee.

In accordance with Section 3(c) of the Act, the Borough hereby imposes an annual fee for the use

of right-of-way in the amount of \$270 per small wireless facility or \$270 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 Borough shall be responsible to pay such right-of-way fee whether or not such provider receives an invoice from the Borough. 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 Article and shall be subject to the penalties and remedies in this Article.
- 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 shall be adjusted upward by resolution of Borough Council if authorized by Section 7(c) of the Act.
- D. The owner of each small wireless facility installed within a right-of-way on the effective date of this Article shall provide the Borough 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 Article.
- E. The owner of each small wireless facility shall provide the Borough 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 Borough within 30 days.

§232-111. Application Fees.

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

- A. For an application seeking approval for between one and five co-located small wireless facilities: \$500.
- B. For an application seeking approval of more than five co-located small wireless facilities: \$500 plus \$100 for each co-located small wireless facility beyond five.
- C. For an application seeking approval of a small wireless facility that requires the installation of a new or replacement utility pole: \$1,000.
- D. The fees established by this Section shall be adjusted upward by resolution of Borough

Council if authorized by Section 7(c) of the Act.

§232-112. Removal of Small Wireless Facilities from Right-of-Way.

- A. Within 60 days of suspension or revocation of a permit due to noncompliance with this article or the Act, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.
- B. Within 90 days of the end of a permit term or an extension of the permit term, the permit holder shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the permit holder's wireless facilities and associated equipment are the only facilities on the utility pole.
- C. A wireless provider which elects to discontinue the use of a small wireless facility shall notify the Borough in writing not less than 45 days prior to the discontinuance of use of the small wireless facility, which notice shall specify when and how the wireless provider will remove the small wireless facility and, if applicable, the pole. The wireless provider shall complete the removal within 45 days of the discontinuance of the use of the small wireless facility. A permit issued under this Article for a small wireless facility which is voluntarily removed shall expire upon the removal of the small wireless facility.

§232-113. Violations and Penalties.

- A. Violations. It shall be a violation of this Article to do or permit the following:
 - 1. To install a small wireless facility prior to obtaining the permit required by this Article.
 - 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 Article or to make a payment by a means which is later dishonored.
 - 5. To violate any other provision of this Article.
- B. Penalties. Any person who violates or permits the violation of any provision of this Article shall be liable upon summary conviction therefor to fines and penalties of not less than \$100.00 nor more than \$1,000.00 plus all costs of prosecution, including attorneys' fees, which costs, fines, and penalties may be collected as provided by law. Each day that a

violation continues and each Section of this Article which is violated constitutes a separate violation.

Section 2. All other sections, parts and provisions of the Code of Ordinances of the Borough of Mount Joy shall remain in full force and effect as previously enacted and amended.

Section 3. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of Borough Council that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 4. This Ordinance shall take effect and be in force five (5) days after its enactment by Borough Council of the Borough of Mount Joy as provided by law.


DULY ORDAINED AND ENACTED this 1st day of NOVEMBER, 2021, by Borough Council of the Borough of Mount Joy, Lancaster County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF MOUNT JOY
Lancaster County, Pennsylvania

Attest:


(Assistant) Secretary

By:


~~(Vice) Chairman~~ President
Borough Council

[BOROUGH SEAL]

Examined and approved as an Ordinance this 4 day of November, 2021.

By:


Mayor

CERTIFICATE

I, the undersigned, (Assistant) Secretary of the Borough of Mount Joy, Lancaster County, Pennsylvania ("Borough") certify that: The foregoing is a true and correct copy of an Ordinance of Borough Council of the Borough which duly was enacted by affirmative vote of a majority of the members of Borough Council of the Borough of Mount Joy at a meeting duly held on the 1st day of NOVEMBER, 2021; and was examined and approved by the Mayor; such Ordinance has been duly recorded in the Ordinance Book of the Borough; such Ordinance has been duly published as required by law; and such Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that Borough Council of the Borough of Mount Joy met the advance notice and public comment requirements of the Sunshine Act, 65 Pa. C.S. §701 et seq., as amended, by advertising the date of said meeting, by posting prominently a notice of said meeting at the principal office of the Borough of Mount Joy or at the public building in which said meeting was held, and by providing a reasonable opportunity for public comment at said meeting prior to enacting such Ordinance.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Borough of Mount Joy, this 4th day of NOVEMBER, 2021.



(Assistant) Secretary

[BOROUGH SEAL]



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