



**UPPER UWCHLAN TOWNSHIP
PLANNING COMMISSION
AGENDA**
June 11, 2020
7:00 p.m.

LOCATION: This meeting will now be held **virtually**. Any member of the public interested in participating in the meeting should email the Township at tscheivert@upperuwchlan-pa.gov for a link and a password to join in the meeting. In an effort to minimize public exposure to COVID-19 and maintain social distancing, the meeting will be conducted via webinar. No attendance in-person will be allowed. If you require special accommodation, please call the Township office at 610-458-9400.

- I. Call To Order
- II. Ordinance Amendments
Review and discuss draft ordinance amendments regarding:
animal control, noise and waste; wireless communication
facilities; small wireless facilities.
- III. Approval of Minutes: May 14, 2020 Meeting
- IV. Next Meeting Date: July 9, 2020 7:00 PM
Location: To Be Determined
- V. Open Session
- VI. Adjournment

UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE UPPER UWCHLAN TOWNSHIP CODE OF ORDINANCES TO REPLACE CHAPTER 50. ANIMALS WITH NEW AND UPDATED PROVISIONS RELATED TO THE CONTROL AND MANAGEMENT OF ANIMALS WITHIN THE TOWNSHIP.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Upper Uwchlan Township as follows:

SECTION 1. Chapter 50. Animals of the Upper Uwchlan Township Code is hereby repealed in its entirety and replaced to now read as follows:

Chapter 50. Animals

Article I. Animal Disturbances and Animal Control.

§50-1. Noise Disturbances.

It shall be illegal within the Township for any person or persons to own, possess, harbor, or control any animal ~~or bird~~ which makes any noise continuously and/or incessantly for a period of 15 minutes or makes such noise intermittently for 1/2 hour or more, to the disturbance of any person of reasonable sensibilities any time of the day or night regardless whether the animal ~~or bird~~ is physically situated in or upon private property, said noise being a nuisance; providing, that at the time the animal ~~or bird~~ is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal ~~or bird~~ is situated nor is there any other legitimate cause which is justifiably provoking the animal ~~or bird~~.

§50-2. Animals at large; leash requirements.

A. It shall be unlawful for the owner or person having custody of any animal or the parent or guardian of any minor owning or having custody of any animal to allow the animal to run at large over the streets or public grounds, or upon the property of another without permission. It shall also be unlawful for the owner or person having custody of such animal to permit such animal to pose a danger to pedestrians using adjacent sidewalks and streets.

B. It shall be the duty of the owner, custodian or keeper of any dog traveling on the streets or public grounds to have the animal on a leash at all times.

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§50-3. Contract authorized.

The Board of Supervisors shall have authority, at its discretion, from time to time, to enter into a contract with an individual or person to act as Animal Control Officer - or as an Animal Protective Services Officer - for the Township. The Animal Control Officer shall be an independent contractor and shall not be the agent, servant or employee of the Township. He/she shall serve for the period of time set out in the contract that is valid at any specific time and shall receive for his services from the Township the amount of money provided in such contract. The Animal Control Officer may be a designated agency or an individual.

§50-4. Authority.

The Animal Control Officer is authorized by the Township to preserve the peace and to arrest or to enforce the law under the terms of the Pennsylvania Dog Law of 1965, as amended. The Animal Control Officer and any of his employees shall perform any of the work in the Township referred to in this Chapter and as provided by contract. If deemed warranted by the Board of Supervisors, the Animal Control Officer may be sworn in for the limited services referred to in this Chapter and pursuant to the contract, and shall have limited powers of a police officer.

§50-5. Extent of animal control work.

The animal control coverage shall be at the discretion of the Chief of Police and shall include the control of animals responsible for bites and the containing and removal of stray dogs. Nothing in this Chapter shall be construed so as to limit any police officer of the Township in enforcing any of the provisions of this Chapter or the Dog Law.

§50-6. Recoupment of Fees paid by the Township.

If a seized animal is claimed by its owner or keeper, or their agent, such person shall pay all reasonable expenses incurred by reason of its detention which shall include the repayment to the Township of all the costs incurred by the Township due the seizure and keeping of the owner's animal. The Township shall send a bill to the owner documenting any and all expenses which were incurred due the seizure and detention of that owner's animal. The owner shall reimburse the Township for those expenses within fifteen (15) days of receipt of written notice of the amount owed to the Township. Additionally, if a resident of the Township is actively trapping stray and feral cats and transporting them to an approved shelter, those costs shall be passed through to the resident and shall not be the financial burden of the Township.

Article II. Animal Waste Disposal

§50-7. Animal defecation without proper removal on public and private property.

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No person having possession, custody or control of any animal shall knowingly or negligently permit any dog or other animal to commit any nuisance, i.e., defecation or urination, upon any gutter, street, driveway, alley, curb or sidewalk in the Township, or upon the floors or stairways of any building or place frequented by the public or used in common by the tenants, or upon the outside walls, walkways, driveways, alleys, curbs or stairways of any building abutting on a public street or park, or upon the grounds of any public park or public area, or upon any private property other than the property of the owner of such animal unless permission is otherwise given. The above action shall constitute a nuisance only when the animal feces is not properly removed by, and disposed of, by the animal owner as below described.

§50-8 Persons to provide container for disposal of animal feces.

Any person having possession, custody or control of any animal in the Township, on property other than the private property of the owner of such animal, shall have in his or her possession and conspicuously display a container, bag or other receptacle for the purpose of immediately removing any feces from such surface.

§50-9. Disposal of animal feces.

Any person having possession, custody or control of any animal which commits a nuisance, i.e., defecation, in any area other than the private property of the owner of such animal shall be required to immediately remove the feces from such surface and either:

- A. Carry same away for disposal in a toilet; or
- B. Place same in a nonleaking container for deposit in a trash or litter receptacle.

§50-10. Dogs accompanying blind or handicapped persons exempted.

The above provisions shall not apply to a guide dog accompanying any blind person, or to any dog used to assist any other physically handicapped person.

Article III. Violations and Penalties.

Any person who violates or permits the violation of any provision of this Chapter shall, upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense, and shall be subject to shall be convicted of violating or failing to comply with the provisions of this Chapter, in summary proceedings, shall be punishable by a fine of not more than \$600, plus costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment for a term of not more than thirty (30) days, together with the costs to be collected as fines and penalties are, by law, collected or to a period of imprisonment not

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~~exceeding 90 days, or both such fine and imprisonment.~~ The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of a violation may be punished as provided above for each separate offense. All fine and penalties collected for violation of this Chapter shall be paid to the Township Treasurer.

SECTION 2. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. Effective Date. This Ordinance shall become effective in five days from the date of adoption.

ENACTED AND ORDAINED this ____ day of _____, 2020.

ATTEST:

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Gwen A. Jonik, Township Secretary

Sandra M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member

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M E M O R A N D U M

To: Tony Scheivert, Upper Uwchlan Township Manager

CC: Al Gaspari & Gwen Jonik

From: Kimberly P. Venzie

Date: April 28, 2020

Subject: Wireless Communications Facilities (WCF) Ordinance Provisions, Background of State and Federal Law, Updates to the Law, and Amendments Needed related to Small Wireless Facilities (SWF)

Attachments to this Memorandum are as follows:

1. **Ordinance to update WCF provisions of the Zoning Ordinance.**
2. **Small Wireless Facilities Ordinance (which will be a standalone ordinance).**
2. **Small Wireless Facility Design Guidelines to be adopted by Resolution (also referred to in the SWF Ordinance).**

Several years ago, the Township amended its Zoning Ordinance in order to update certain wireless communications facilities ordinance provisions to comply with state and federal law. However, telecommunications law, and the technology associated with it, is constantly evolving. Below I have summarized legislative history in this area of law to bring you up-to-speed, and outlined the next steps that the Township needs to take in order to accommodate and manage the expected influx of 5G through the installation of small wireless facilities in the Township. This memorandum can also be used to update the Planning Commission and the Board of Supervisors on this area of the law and action needed by the Township.

A. FEDERAL AND STATE LAW

Federal and state law regulating traditional cell towers, such as those that are hundred (100') feet or higher in height, have remained relatively unchanged in recent years. However, the laws and regulations that govern mini-cell towers have been in a constant state of flux over the last few years. This is in large part due to the federal government's support of the rapid deployment of distributed antennae systems (DAS) and small cell networks. DAS are the wireless communications facilities that are often referred to as mini-cell towers. DAS use small antenna to relay cellular and data signals from mini-

cell tower to mini-cell tower. DAS are often placed within public rights-of-way on existing utility poles, streetlamp posts or upon newly constructed poles. Certain types of DAS qualify as Small Wireless Facilities (“SWF”), which will be discussed in more detail later in this Memorandum. There are currently a number of federal laws and regulations that govern a municipality’s authority to regulate WCF. Congress has passed certain statutes that are intended to facilitate the deployment of WCF, and the Federal Communications Commission (the “FCC”) issues rulings that interpret these statutes and provide even more detailed guidance and directives that municipalities are required to follow in their local regulation of WCF. The Telecommunications Act of 1996 (the “Telecommunications Act”) has been referred to as a deregulation of the telecommunications industry. The Telecommunications Act provides that no state or local regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service. The Telecommunications Act also provides that applications need to be processed in a reasonable period of time. In 2009, the FCC issued a ruling (the “Shot Clock Ruling”) which provides for specific time limits for the review of zoning requests for certain wireless towers. The time period for an initial collocation request is 90 days and 150 days for new towers.

In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the “Spectrum Act”) providing that local governments must approve any request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station. In 2014, the FCC issued the Wireless Infrastructure Order which implemented the Spectrum Act. This Order clarifies that the shot clocks for specific time of review and approval are also applicable to DAS and small cell deployments. This Order imposed time limits for the review of DAS facilities, 60 days for site modification and 90 days for a new installation. If a municipality does not meet these time limits, the applications are deemed granted unless both parties mutually agree to an extension of time.

Most recently, in September of 2018, the FCC issued a ruling (often referred to as the “Small Cell Wireless Order” or herein as the “FCC 2018 Ruling”) establishing federal regulations governing small cell wireless facilities and shorter shot clocks governing the amount of time within which local governments must review applications. The FCC provides a definition for small wireless facilities (“SWF”) and provides a 60-day review period for collocation and 90-day review period for new builds. Municipalities may charge fees that are no greater than a reasonable approximation of the objectively reasonable costs for processing such applications and managing deployments in the public rights-of-way. The FCC 2018 Ruling sets forth specific fees/costs that would be considered acceptable. Municipalities are permitted to impose aesthetics controls provided they are reasonable, no more burdensome than those applied to other types of infrastructure deployments within rights-of-way and published in advance. This FCC ruling also holds that the providers cannot be required to enter into agreements that mandate providers to pay municipalities a percentage of their gross revenues or any type of fees that are not directly associated with costs incurred by the municipality.

With regard to state law, in 2012, Pennsylvania adopted the Wireless Broadband Collocation Act (the “Broadband Act”) that expands upon federal law and streamlines the approval process for modifications and collocations of WCF. Under the Broadband Act, applications for replacement, collocation or modification of WCF or wireless support structures cannot be subject to the issuance of new zoning or land use approvals or reviews beyond the initial zoning or land use approval issued for the previously approved wireless support structure or wireless telecommunications facility. The Broadband Act also imposes a 90-day time frame for the review of applications for modifications or collocations of a WCF or the application is deemed approved. There is additional pending legislation in Pennsylvania to further encourage SWF deployment; however, that legislation has not been passed as of today’s date.

Local municipalities that attempt to regulate WCF, including SWF, may do so provided those ordinances comply with, and do not conflict with, the above cited state and federal laws.

B. PUBLIC UTILITY STATUS AND ITS IMPACT UPON REGULATION

Prior to 2017, the Pennsylvania Public Utility Commission (“PUC”) considered DAS providers to be public utilities which allowed these companies to assert that they were exempt from zoning requirements and had the power to condemn. A Certificate of Public Convenience pre-empts local control over the siting of mini-cell towers. In 2017, the PUC then determined that DAS providers and operators did not meet the definition of public utility and therefore were not entitled to obtain Certificates of Public Convenience. However, this PUC decision was appealed and the Pennsylvania Commonwealth Court held that DAS providers fall within the definition of a public utility. *Crown Castle NG East, LLC v. Pa. PUC*, 188 A.3d 617 (Pa. Cmwlth 2018). This decision is currently on appeal before the Pennsylvania Supreme Court. Nevertheless, as a result of the Pennsylvania Commonwealth Court decision, DAS network operators are again considered to be public utilities, and upon receipt of Certificate of Public Convenience from the PUC, network operators (also referred to as “providers”) are entitled to access public rights-of-way for installations. We will monitor the pending appeal in the Pennsylvania Supreme Court and notify you once a decision is rendered.

C. THE IMPACT OF THE RECENT 2018 FCC RULING

The FCC 2018 Ruling is intended to remove state and local regulatory barriers that inhibit the deployment of infrastructure necessary for 5G, and other advanced wireless services. Amendments were made to Township’s Zoning Ordinance to bring ordinance provisions into compliance with prior enacted laws. However, additional ordinance and design regulations are needed so that the Township can maintain some allowable control over SWF in the Township. It is clear from the FCC 2018 Ruling that the FCC expects municipalities to facilitate the deployment of wireless infrastructure. The FCC, relying on its interpretation of existing federal law, reminds local government that it cannot adopt a regulation or ordinance that prohibits or has the effect of

prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

In particular, the FCC 2018 Ruling removes barriers to the deployment of WCF described as “Small Wireless Facilities”. These are the facilities that will support the next generation of wireless services, known as 5G. The FCC Order defines **“Small Wireless Facilities” (SWF) as facilities mounted on structures 50 feet or less in height or on structures no more than 10 percent taller than adjacent structures with an antenna no more than three cubic feet and total wireless equipment no more than 28 cubic feet.** The FCC 2018 Ruling also adds a time clock for review and decisions on applications for WCF that qualify as SWF. SWF must be approved in either 60 days for co-locations on an existing structure or 90 days for a siting on a new structure. Permit fees for SWF need to be reasonable, fair and commensurate with actual costs incurred by the municipality. The FCC has determined that the following fee amounts are presumptively reasonable:

(1) \$500 as a non-recurring fee (this would be an up-front application fee that includes up to five SWF, and \$100 more for each additional SWF) and \$1,000 as a non-recurring fee for a new pole intended to support one or more SWF; and

(2) \$270 per SWF per year as a recurring fee which would include a ROW access fee or attachment to a municipally owned structure.

In addition to other determinations, the FCC 2018 Ruling provides that municipalities can set forth aesthetic requirements as long as they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.

D. OBJECTIVES, POLICY DECISIONS & MEETING

Below I have listed the documents attached to this Memorandum and what they are intended to accomplish:

- An Ordinance to amend the WCF provisions of your Zoning Ordinance to cross-reference the new SWF ordinance, provide some additional regulations with regard to allowable locations for WCF (that are not SWF) within rights-of-way in the Township, permit fee language and to state the intent to be consistent with state and federal law (to avoid having to continually amend those sections).
- The Small Wireless Facilities Ordinance is a standalone ordinance to regulate SWF within ROWs. This technology is being rapidly deployed and the Township can regulate by design more so than by zoning restrictions. So, SWF can be addressed in an ordinance separate from the Township’s Zoning Ordinance.

- The Small Wireless Facility Design Guidelines should be adopted by resolution and set forth all the design regulations for SWF in ROWs. These guidelines can be even more tailored to the Township's preferences. Input is needed as to what designs are deemed acceptable to the Township, particularly with respect to Figures 3 and 4 attached to the design regulations.

As you will notice, the Small Wireless Facilities Ordinance (and related Design Guidelines) allow SWFs in all public Rights-of-Way, and does not limit them to certain zoning districts or streets; however, the ordinance does attempt to control the appearance of these SWF through very specific design requirements which include some placement controls – such as new poles not being placed directly in front of a residential home. This type of design criteria has been provided by our office as a starting point and can certainly be changed. Wireless Communications Facilities that do not qualify as Small Wireless Facilities would be required to comply with Section 200-91 of the Zoning Ordinance which provides for more stringent controls including a conditional use process for new facilities.

I would be happy to participate in future Planning Commission or Board of Supervisors meetings to field any questions. And of course, please let me know your input and any questions that you might have on this topic.

UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
ORDINANCE NO. 2019 –

AN ORDINANCE OF THE TOWNSHIP OF UPPER UWCHLAN, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 200 OF THE UPPER UWCHLAN TOWNSHIP CODE, ENTITLED “ZONING” AT SECTION 200-91. WIRELESS COMMUNICATIONS FACILITIES TO PROVIDE FOR ADDITIONAL PROVISIONS REGARDING WHERE TOWER-BASED WCF MAY BE LOCATED WITHIN PUBLIC RIGHTS-OF-WAY, PROVISIONS TO CLARIFY THAT SMALL WIRELESS FACILITIES ARE GOVERNED BY A SEPARATE ORDINANCE AND DESIGN GUIDELINES, CLARIFY ALLOWABLE PERMIT FEES, AND UPDATE PROVISIONS TO COMPLY WITH FEDERAL LAW WITH RESPECT TO WIRELESS COMMUNICATIONS FACILITIES IN UPPER UWCHLAN TOWNSHIP.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Upper Uwchlan Township that Chapter 200 of the Upper Uwchlan Township Code, titled, “Zoning”, shall be amended as follows:

SECTION 1. Section 200-91.(A)(2) is hereby removed and shall now read as follows:

“(2) Small Wireless Facilities. Tower-based WCF that qualify as Small Wireless Facilities as has been defined by the Federal Communications Commission are governed by a separate ordinance, and related design criteria, as adopted by the Township to address Small Wireless Facilities. Wireless Communications Facilities that fall under the definition of Small Wireless Facilities are governed and controlled by this separate Small Wireless Facilities ordinance and approved design criteria. Small Wireless Facilities are not subject to the provisions of this Section 200-91.”

SECTION 2. Section 200-91.A.(5) shall be amended so that the title and first sentence of such section shall be removed and replaced to read as follows:

“(5) Height and Design. All tower-based WCFs shall be monopoles and designed at the minimum functional height and shall not exceed a maximum total height of 150 feet (unless located within public rights-of-way which are required to be 50 feet or less in height), which height shall include all subsequent additions or alterations.”

SECTION 3. Section 200-91.A.(17) shall be amended and revised to read as follows:

“(17) Permit fees. The Township may assess appropriate, fair and reasonable permit fees directly related to the Township’s actual costs in reviewing and processing the application for approval of a tower-based WCF as set forth in fee schedules established by the Township.”

SECTION 4. Section 200-91.C.(1) shall be amended and revised to read as follows:

“(1) Permitted Locations and Additional Design Standards

(a) Only tower-based WCF that are 50 feet or shorter in height are permitted, by conditional use, within the public rights-of-ways along corridors and roadways in the LI Limited Industrial District.

(b) Only tower-based WCF that are 50 feet or shorter in height are permitted, by conditional use, within the public rights-of-ways and along the following corridors and roadways, regardless of the underlying zoning district, provided they are not located within an area that is entirely served by underground utilities (excluding underground sewer and water lines):

[1] Route 100

[2] Graphite Mine Road

[3] Fellowship Road

[4] Little Conestoga Road

[5] Milford Road

[6] Font Road

[7] Park Road

(c) Any such tower-based WCF shall not be located within any public rights-of-way that directly front or abut the front yard of a residential dwelling or the front yard of a residentially zoned property.”

SECTION 5. Section 200-91.D. shall be amended so that the title and introductory paragraph reads as follows:

“D. General requirements for all nontower wireless communications facilities.

Nontower wireless communications facilities that qualify as Small Wireless Facilities as has been defined by the Federal Communications Commission are governed by a separate ordinance, and related design criteria, as adopted by the Township to address Small Wireless Facilities. Small Wireless Facilities are not subject to the provisions of this section or any portion of Section 200-91. The following regulations shall apply to all nontower wireless communications facilities that do not substantially change the physical dimensions of the wireless support structure to which they are attached:”

SECTION 6. Section 200-91.D.(9) shall be amended and revised to read as follows:

“(9) Permit fees. The Township may assess appropriate, fair and reasonable permit fees directly related to the Township’s actual costs in reviewing and processing the application for approval of a nontower WCF as set forth in fee schedules established by the Township.”

SECTION 7. Section 200-91.E.(12) shall be amended and revised to read as follows:

“(12) Permit fees. The Township may assess appropriate, fair and reasonable permit fees directly related to the Township’s actual costs in reviewing and processing the application for approval of a nontower WCF as set forth in fee schedules established by the Township.”

SECTION 8. Section 200-91. is amended to include a new subsection J as follows:

“J. Consistency with state and federal laws and regulations. The provisions contained herein regulating Wireless Communications Facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section 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.”

SECTION 9. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality,

illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors of West Goshen Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 10. Repealer. All Ordinances or parts of Ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 11. Effective Date. This Ordinance shall be effective five (5) days following enactment as by law provided.

ENACTED AND ORDAINED this _____ day of _____, 2020.

ATTEST:

Gwen A. Jonik, Township Secretary

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Sandra M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member

UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. ____ – 2020

AN ORDINANCE OF THE TOWNSHIP OF UPPER UWCHLAN, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE UPPER UWCHLAN TOWNSHIP CODE OF ORDINANCES, AS AMENDED, TO PROVIDE A NEW CHAPTER ENTITLED “CHAPTER 143 – SMALL WIRELESS FACILITIES” TO ALLOW FOR, AND REGULATE SMALL CELL WIRELESS FACILITIES, WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE TOWNSHIP.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Upper Uwchlan Township that the Upper Uwchlan Township Code of Ordinances, as amended, is hereby further amended as follows:

SECTION 1. A new Chapter 143 entitled “Small Wireless Facilities” is hereby enacted as part of the Code of Upper Uwchlan Township and shall read as follows:

CHAPTER 143
SMALL WIRELESS FACILITIES

§143-1. PURPOSE AND INTENT.

The purpose of this Chapter 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 (“SWF”) in the public right-of-way of streets and roads.

(A) The intent of this section is to:

- (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 Township 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;
- (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.

§143-2. APPLICABILITY

- (A) Subject to the provisions of this Chapter and granting of the required permits, an applicant may locate and/or collocate a 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 and/or operator shall comply with this Chapter and any rules, regulations, and design guidelines adopted by the Township that are consistent with this Chapter for the installation and/or collocation of a 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.
- (C) All SWF shall be constructed and maintained so as not to impede or impair public safety or the legal use of the public right-of-way by the Township, the traveling public, or other public utilities.
- (D) Nothing in this chapter precludes the Township 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.

§143-3. DEFINITIONS

COLLOCATION or COLLOCATE. The mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DECORATIVE POLE OR STRUCTURE. A pole, arch, or structure placed in the public right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed or are permitted to be placed in accordance with nondiscriminatory Township practices except for any of the following:

- (1) Electric lighting;
- (2) Specially designed information or directional signage;

- (3) Temporary holiday or special event attachments;
- (4) Small Wireless Facilities.

DESIGN GUIDELINES. Means those detailed design guidelines, specifications and examples promulgated by resolution that address, on a nondiscriminatory basis, the design and installation of facilities in the public rights-of-way, insofar as they do not conflict with any federal or state law, rule and regulation, including this Chapter.

~~TOWN CENTER/HISTORIC DISTRICT.~~ ~~An area that is zoned or otherwise designated as the Town Center and/or Historic District, or is otherwise subject to historic preservation regulations, under municipal, state or federal law and for which the Township maintains and enforces in an uniform and nondiscriminatory basis with regard to all users of the public right of way pursuant to this Chapter.~~

LOCATE. Means to install, mount, maintain, modify, operate, or replace SWF.

OWNER. A provider, operator or owner of SWF (who may also be the applicant).

PUBLIC 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 FACILITY “SWF”. A type of Wireless Communication Facility (WCF) as specifically defined by the Federal Communications Commission in Part 1 of Title 47 of the Code of Federal Regulations as follows, or as hereinafter amended:

- (A) “Small Wireless Facility” means a facility that meets each of the following conditions:
 - a. The structure on which antenna facilities are mounted –
 - i. Is 50 feet or less in height, or
 - ii. Is no more than 10 percent taller than other adjacent structures, or
 - iii. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
 - b. Each antenna (excluding associated antenna equipment) are cumulatively no more than three cubic feet in volume; and
 - c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
 - d. The facility does not require antenna structure registration under 47 CFR Part 17.
 - e. The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and

- f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

TOWNSHIP-OWNED POLE. Means (i) a Utility Pole owned or operated by the Township, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Township such as a Decorative Pole.

TRANSMISSION POLE. A pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

UTILITY POLE. A pole or similar structure that is designed for, or used, for carrying electric distribution lines or for carrying cables or wires for electric, cable, or telecommunications service or for lighting, traffic control, or directional signage.

VILLAGE/COMMERCIAL DISTRICT. An area that is zoned or otherwise designated as a village center and may include historic structures subject to historic preservation, and includes surrounding commercial districts which the village center may extend into in future years. Consists of the C-1, C-2 and C-3 Zoning Districts in the Township.

WIRELESS SUPPORT STRUCTURE. A freestanding structure, including a monopole, Decorative Pole, Township-Owned Pole, Transmission Pole, and Utility Pole, or other existing or proposed structure designed to support or capable of supporting SWF.

§143-4. APPLICATION PROCESS

- (A) *Application Required.* An applicant must apply to the Township to locate a new SWF and/or collocate any portion of a SWF on an existing Wireless Support Structure or to construct, maintain, modify, operate, or replace Wireless Support Structures in, along, across, upon, and under the Public Right-of-Way. Anyone seeking to perform any of these actions shall first duly file a permit application with the Township, in accordance with the requirements of this Chapter and additional requirements as set forth in the Small Wireless Facilities Design Guidelines as adopted by resolution and which may be modified from time to time by further resolution.
- (B) *Permit Required.* No person shall occupy or use the public right-of-way without first obtaining, under this Chapter, the required permit from the Township. Before placing SWF in the public right-of-way, an owner must apply for and receive a permit. This provision shall not be construed to waive any application fees, or any other construction or work permit necessary for work in the Township. While notice to the Township is required, a permit from the Township shall not be required for routine maintenance or same-size and type replacement of Small Wireless Facilities that do not interfere with pedestrian or vehicular traffic.

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

- (1) The Applicant's name, address, telephone number and e-mail address;
- (2) Facility owner's name, address, telephone number and email address, if different from Applicant;
- (3) The names, addresses, telephone numbers, and e-mail 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.
- (4) A description of the Small Wireless Facilities being proposed in order for the Township to verify that the proposed facilities are Small Wireless Facilities as specifically defined by the FCC;
- (5) A mapping showing the exact location of the proposed Small Wireless Facilities in the case of multi-site applications and photo simulations/depictions of the type and style of the proposed Small Wireless Facilities (which should be in compliance with the Township's Small Wireless Facility Design Guidelines).
- (6) A description of the proposed scope of work for the location or Collocation of the SWF. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (7) Verification that the SWF shall comply with this Chapter, including all applicable Small Wireless Facilities Design Guidelines;
- (8) Verification of payment of the application fees, annual municipal consent or administrative fee for use of Public Rights-of-Way and acknowledgment of its continuing annual obligation;
- (9) Evidence the 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;
- (10) 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,

(11) The applicant must provide a statement that the applicant has a lease, attachment agreement or other authorization from the owner of the Wireless Support Structure proposed for Collocation.

§143-5. FEES AND COSTS

(A) *Rights-of-Way Access Fees and Agreement*: Each individual Applicant will be subject to an annual Rights-of-Way access fee if locating within a Township owned Public Right-of-Way. Such fees shall not be in excess of those amounts deemed reasonable by the Federal Communications Commission. If the Township has developed a form right-of-way use agreement, the Applicant shall also be required to enter into such agreement which will be made available to the Applicant for review and execution.

(B) *Application processing costs*. Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by an application processing cost as follows: 1) application costs for Small Wireless Facilities addressed in a consolidated application shall be \$500 which may include up to five Small Wireless Facilities, and an additional \$100 for each Small Wireless Facility beyond five, up to and including 30 total Small Wireless Facilities per one application, and 2) application costs of \$1,000 for a new pole (not a collocation) intended to support one or more Small Wireless Facilities. Such costs may be altered by resolution but only in compliance with state and/or federal limits upon such costs.

(C) *Compensation*. In addition to the applicable fee as specified above, every permit shall include as a condition the Applicant's agreement to pay a Right-of-Way access fee of \$200 per Small Wireless Facility per year, and/or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Township. Additionally, if the Small Wireless Facilities is proposed to be located upon a Township-Owned Pole with a Right-of-Way, and the Township consents to such Collocation, an additional annual fee of \$70 per Small Wireless Facility shall be payable to the Township for such placement. Such fees may be altered by resolution but only in compliance with state and/or federal limits upon such costs.

(D) Small Wireless Facilities collocated on Township-owned utility poles or structures outside the Township rights-of-way are not subject to the rate limitations in this Chapter. Additionally, if the rate limitation imposed by the Federal Communications Commission is altered in the future, the Township may alter its fees by resolution to be consistent with the Federal Communications Commission's determinations or as might be otherwise altered by the state or federal government.

- (E) *Cease Payment.* Upon thirty (30) days written notice to the Township, an Owner is authorized to remove its Small Wireless Facility from a Township-Owned Pole and cease paying the annual fee to the Township as of the next due date for payment following the removal, provided; however, the Owner shall pay its pro-rata share of the remaining term and expenses, if any.
- (F) *Make-ready.* For Township-Owned Poles, the applicant shall reimburse the Township for expenses for any reasonable make-ready work, if any are required. The Township 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.

§143-6. APPLICATION REVIEW TIMEFRAMES

- (A) Permit Application Review.
 - (1) Collocation of SWF. Absent a written agreement to the contrary between the Township and the Applicant, the Township shall grant or deny an application to collocate, or to replace or modify any portion of a SWF on, or associated with, an existing wireless support structure not later than sixty (60) days after the date of filing by an entity of a completed application.
 - (2) Installation of New SWF. Absent a written agreement to the contrary between the Township and the Applicant, the Township shall grant or deny an application for a SWF within the Public Right-of-Way not later than ninety (90) days after the date of filing by an entity of a completed application.
 - (3) Removal of SWF. The Township shall act on requests to remove Wireless Support Structures associated with SWF from the Public Right-of-Way typical to the review timeframes for the Public Right-of-Way permit required for this activity.
 - (4) Completeness. Within ten (10) business days of receiving an application, the Township will determine and notify the Applicant whether the application is complete; or if an Application is incomplete, the Township must specifically identify the missing information.
 - (5) *Application Denials.*
 - (a) The Township shall not unreasonably withhold or deny an application for a permit to place a SWF within the Public Right-of-Way.

- (b) If an application is denied, the Township will provide in writing its reasons for denying the request, including, if applicable, specific references to any applicable law supporting the denial.
- (c) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Township and resubmit the Application within thirty (30) days of the denial, and the Township will approve or deny the revised Application within thirty (30) days of receipt of it, unless additional deficiencies are discovered.

§143-7. CONSOLIDATED APPLICATION FOR MULTIPLE SWF

- (A) Applicants seeking to construct, modify, collocate, or replace more than one SWF, may file, at the applicant's discretion, a consolidated application for up to 30 requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the SWF subject to the following:
 - (1) This single application may be filed for multiple SWF only if they are of substantially the same type.
 - (2) The Township must separately address SWF for which incomplete information has been received or which are denied, and it must grant a permit for any and all sites in a single application that it does not deny subject to the requirements of this Chapter.

§143-8. MAXIMUM HEIGHT, PROXIMITY OF SWF AND ALTERNATE LOCATIONS

- (A) Maximum Height. The maximum height of a new pole for the installation of a SWF is limited to a maximum height of fifty (50) feet, subject to any restrictions imposed by the Small Wireless Facility Design Guidelines. Applicant may collocate on existing Wireless Support Structures provided the Small Wireless Facility's height still qualifies as a Small Wireless Facility as defined by this Chapter and as by the Federal Communications Commission.
- (B) Alternate Locations. If an applicant is seeking to install a new Wireless Support Structure as part of its application, the Township may propose that the Small Wireless Facility be located on an existing utility pole or existing Wireless Support Structure within one hundred (100) feet of the proposed location. The Applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits, acts as an effective prohibition under federal law, or additional unreasonable costs will be incurred as determined by the Applicant. If the Applicant refuses an alternate location based on the foregoing, the Applicant shall provide legally competent evidence in the form of a written certification describing the

property rights, technical limits or cost reasons that prevent the alternate location from being utilized.

- (C) The Township may reserve space on Township-Owned Poles for future public safety uses or for Township electric utility uses. Such reservation may preclude collocation of Small Wireless Facilities if the Township reasonably determines that the Township's poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Township-Owned Poles.
- (D) In certain circumstances, collocation may not be feasible, and a new pole needs to be installed by the Applicant. In such cases, a Small Wireless Facility located on a new pole shall be separated by 150 feet from any other Small Wireless Facility located upon a pole with that singular purpose (meaning it is not a collocation but another stand-alone SWF pole).

§143-9. GENERAL DESIGN REQUIREMENTS

- (A) The Township has, or shall, adopt Small Wireless Facility Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area.
- (B) The Small Wireless Facility Design Guidelines may include examples of SWF preferences including visual depictions (if readily available and identified by the Township).
- (C) The provisions in this Chapter shall not limit or prohibit the Township's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Small Wireless Facility Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) All Small Wireless Facilities 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 Township shall have authority to update or supplement the Small Wireless Facility Design Guidelines to address relevant changes in law, technology, or administrative processes.
- (F) Wireless Support Structure Design Standards
 - (1) General Guidance
 - (a) 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 and blend in with the existing environment.

- (b) All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible.
- (c) 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 much as possible by blending into the natural and/or physical environment.
- (d) Casing 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.
- (e) 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 required to be legible from street level.

§143-10. VILLAGE/COMMERCIAL DISTRICT OR/AND HISTORIC RESOURCES, STRUCTURES AND/OR HISTORIC PRESERVATION PROTECTED AREAS.

TOWN CENTER/ HISTORIC DISTRICTS OR HISTORIC PRESERVATION PROTECTED AREAS

- (A) This Chapter may not be construed to limit the Township's authority to enforce historic preservation zoning regulations consistent with the local, state or federal law including the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.
- (B) As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in the Village/Commercial District a Town Center/Historic District, the Applicant shall comply, to the greatest extent possible, with the design and aesthetic standards of the Village/Commercial DistrictTown Center/Historic District, or historic preservation standards in place, to minimize the negative impact to the aesthetics in these districts or areas. This includes the Village Design Guidelines which are incorporated as part of the Township's Comprehensive Plan.
- (C) New Districts. Nothing in this Chapter shall prohibit or otherwise limit the Township from establishing subsequent new village center, commercial or town centerorhistoric districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Chapter prior to the establishment of the new district remain subject to the provisions of this Chapter, including routine maintenance and replacement of those facilities and structures. If a wireless services provider or a wireless infrastructure provider replaces such

facilities in a manner that does not comply with this Chapter, or if a wireless services provider or a wireless infrastructure provider relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the newly established district.

§143-11. GENERAL CONDITIONS AND REQUIREMENTS OF PERMIT APPROVAL

- (A) *Permit Effect and Duration.* The Township's approval term for collocation or a new pole shall be for a period of nine (9) months. If construction, installation or collocation is not begun within such nine (9) month period, a new application must be submitted for review including any required fee. A permit from the Township authorizes an Applicant to undertake only certain activities in accordance with the Chapter 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 Township 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 Chapter 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 Township 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.
- (C) *Inspections; emergencies.* The Township 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 Township 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 Township shall notify the Owner and provide the opportunity to move such facilities, poles, or support structures prior to the Township doing so, and the Township shall notify the Owner after doing so.
- (D) *Relocation or adjustment as requested by Township.* If requested by the Township, 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 Township, 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.

- (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 Township.
- (F) *Indemnification.* Any entity who owns or operates SWF in the Public Right-of-Way shall indemnify, protect, defend, and hold the Township 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 of damages 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.
- (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.
- (H) *Relocation for public improvement projects.* To the extent that the Township 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 Township.

§143-12. REMOVAL OF SWF IF USE DISCONTINUED OR ABANDONED.

- (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 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 SWF does not reply to the Township in writing that the SWF 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 SWF(s) within the right-of-way.

§143-13. SAFETY REQUIREMENTS

- (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.

- (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 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 SWF and contact information.

§143-14. EXCEPTIONS TO APPLICABILITY

- (A) Nothing in this Chapter authorizes the collocation of small wireless facilities on:
 - (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.

§143-15. 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 section. To the extent that any of the provisions in this section 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.

§143-16. 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 Council.

§143-17. PENALTIES

Any person, firm or corporations who violates or permits a violation of this Chapter shall, upon conviction in a summary proceeding brought before a Magisterial District Judge under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment for a term not exceeding 90 days. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Chapter that is violated shall also constitute a separate offense. Nothing herein shall prevent the Township 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.

SECTION 2. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. GENERAL CODE. General Code is hereby authorized to make any necessary formatting and numbering changes needed in order for this Ordinance to be made consistent with the formatting and numbering standards applicable to the Upper Uwchlan Township's Code of Ordinances as published by General Code.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED this _____ day of _____, 2020.

ATTEST:

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Gwen A. Jonik, Township Secretary

Sandra M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member

**UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

RESOLUTION NO. _____ of 2020

WHEREAS, a Federal Communications Commission (FCC) decision on small cell wireless facilities has been made regarding aesthetics of these facilities; and

WHEREAS, the Township has previously adopted ordinances to regulate wireless communications facilities but desires to further clarify those regulations, and provide for more specific design requirements for such facilities, and more particularly for Small Wireless Facilities (SWF); and

WHEREAS, the Township has determined that in cases where adopted ordinances conflict with the Design Guidelines adopted pursuant to this aesthetics policy, then the Design Guidelines shall be controlling and supersede with respect to the elements of design; and

WHEREAS, this Township recommends adoption of an aesthetics policy setting forth Design Guidelines for Small Wireless Facilities.

NOW, THEREFORE, BE IT RESOLVED to officially adopt the Small Wireless Facility Design Guidelines attached hereto which may be further amended by resolution.

Dated this _____ day of _____, 2020.

ATTEST:

**BOARD OF SUPERVISORS
UPPER UWCHLAN TOWNSHIP**

Gwen A. Jonik, Township Secretary

Sandra M. D'Amico, Chair

UPPER UWCHLAN TOWNSHIP

SMALL WIRELESS FACILITY DESIGN GUIDELINES

I. PURPOSE AND COMPLIANCE

The municipality finds that in order to protect the public health, safety and welfare of its residents and to reasonably manage and protect the public rights-of-way (the "ROW") and its uses in the municipality, it is in the best interest of the municipality and its residents and businesses to establish Small Wireless Facility Design Guidelines (the "Guidelines") to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the municipality through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the municipality effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities ("SWF") in the ROW and ongoing use of the ROW for such purposes. These Guidelines are administered through the permitting process conducted by the codes department or zoning officer of the municipality.

Placement or modification of a SWF and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are also required to comply with municipal ordinances, codes and other applicable law and regulations.

II. DEFINITIONS

The definitions contained in the municipality's Zoning Ordinance, and any Small Wireless Facilities Ordinance, as applicable to wireless communications facilities are incorporated into this policy by reference as though fully set forth herein.

III. APPLICATION REQUIREMENTS

As part of the permitting process, the following must be provided:

A. PROOF OF AGENT DESIGNATION (IF APPLICABLE)

If the applicant is serving as an agent of a SWF owner/operator, the applicant must provide written documentation of the agent designation signed by the owner/operator.

B. MAP

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the SWF is proposed to be attached, or from which a SWF is proposed to be removed.

C. PHOTO SIMULATIONS

For all applications to locate SWF in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

D. CONSOLIDATED APPLICATIONS

An applicant seeking to construct, modify, collocate or replace more than one SWF or more than one wireless support structure within the municipality may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of SWF or substantially the same type of wireless support structures.

E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing

curb, driveways, sidewalks, light poles and any other poles or appurtenances.

F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED

The applicant must include a full description of the number and dimensions of all SWF proposed to be installed and the wireless support structure, either new or existing, to be utilized for each SWF. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

G. OWNER'S AUTHORIZATION AND SUBMISSION OF FEES

For any application to attach a SWF to a wireless support structure that is not owned by the municipality, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application. The applicant shall also submit the appropriate application fees to the Township and agree to pay any Right-of-Way access fees applicable to the project.

IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES

A. ANTENNAS

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with the wireless support structure with the height of the side mounted antenna being at a location on the

wireless support structure noted in the application and approved by the municipality, but at least 10 feet above ground level at its lowest point.

4. Tree "topping" or the improper pruning of trees is prohibited.

B. CABLES AND WIRES

All cables, wires and connectors related to the SWF must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the SWF hanging off or otherwise exposed on the wireless support structure.

C. COLORS

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

D. EQUIPMENT ENCLOSURES/CONCEALMENT

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the municipality. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the municipality.
3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS

1. Signage: The SWF permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches. If no cabinet exists, the signage shall be placed at the base of the pole.
2. Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accordance with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
3. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the municipality. SWF and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The SWF operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. Cooling Fans: In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

F. Compliance with Village Design Guidelines and Lighting Provisions

1. Small Wireless Facilities, either as a new facility or as a colocation, to be placed within the Village/Commercial Districts (C-1,C-2 & C-3) are required to comply with the Village Design Guidelines as adopted as part of the Township's Comprehensive Plan, in particular with respect to the Village Light Standard design requirements. When a Small Wireless Facility is designed to be part of a new or existing light standard, the light standard is also required to comply with the lighting provisions set forth in the Township's Zoning Ordinance and Subdivision and Land Development Ordinance.

V. LOCATION REQUIREMENTS

A. COLLOCATION PREFERENCE

It is the municipality's strong preference that whenever an applicant proposes to place a new small wireless facility that the applicant collocate the same on existing wireless support structures.

B. LEAST PREFERABLE LOCATIONS

Residential Districts, ~~the Village Commercial (C-1) District~~~~Historic Districts~~ and locations in close proximity to historic buildings or structures are the least preferred areas for new small wireless facilities and collocation is much preferred.

C. RESIDENTIAL DISTRICTS WHERE ALL UTILITIES ARE LOCATED UNDERGROUND

In residential district where all utilities are located underground, the municipality would like to avoid placement of wireless support structures in such neighborhoods. However, in instances where SWF and wireless support facilities are deemed to be necessary by the applicant, such new wireless support structures shall be designed to blend with the neighborhood in the form of decorative poles or streetlights, and specifically constructed to comply with the design specifications designated for those types of neighborhoods. The use of new streetlamps or decorative poles is mandatory in order to blend with the residential neighborhood.

D. CONSIDERATION OF ALTERNATE LOCATIONS

The municipality reserves the right to propose an alternate location for a SWF and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits, or unreasonable additional costs or act as an effective prohibition.

E. GUIDELINES ON PLACEMENT

The municipality desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a SWF facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent municipal-owned poles, and of the surrounding area adjacent to their location. In the absence of adjacent municipal-owned poles, the wireless support structure shall match the materials and finish of the adjacent utility poles.

The following additional guidelines on placement shall apply:

1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure. This distance separation shall not be applicable to collocations on existing wireless support structures or collocations on the same wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.
5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the municipality's code, applicable law and regulations, or these Guidelines.
6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.
8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.

9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities 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.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure but rather shall be placed in between such structures to minimize visual impacts.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the municipality where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

VI. DEPICTIONS, PHOTOGRAPHS AND SPECIFICATIONS OF VARIOUS LOCATIONS AND DESIGNS DEEMED ACCEPTABLE BY THE MUNICIPALITY

The following are attached hereto, and incorporated herein, as part of the Small Wireless Facility Design Guidelines to provide specific guidance as to locations that are acceptable as well as designs that are deemed acceptable by the Municipality:

Figure 1 – Example of Acceptable Location Between Residential Homes

Figure 2 – Example of Acceptable Location Between Commercial Buildings

Figure 3 – Examples of acceptable Colocations Designs
(Such as being collocated on existing Street Lights, on existing Utility Poles, on existing decorative poles/poles for flags, on directional Street Pole Signs or Traffic Lights)

Figure 4 – Examples of acceptable new Wireless Support Structures Designs
(Such as Replacement/New Street Lights, New Decorative Poles or Street Lights in Residential Neighborhood, New Decorative Poles or

Street Lights in Village/Commercial Districts~~Town/Historic District~~, _____
New Poles on major roads)

VII. LIMITATIONS

While the municipality fully intends to apply the Guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In this case, municipal staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

VIII. EFFECTIVE DATE OF POLICY

This Policy will be effective as of the date of the adoption of the enabling Resolution.

(FIGURES ATTACHED AS REFERENCED ABOVE)



UPPER UWCHLAN TOWNSHIP

Planning Commission Meeting

May 14, 2020

7:00 p.m.

Minutes

DRAFT

LOCATION: This was a virtual meeting, held via Zoom video conferencing, in order to minimize public exposure to COVID-19 and maintain social distancing. The meeting Public Notices instructed those interested in participating in the meeting to email or call the Township Manager for the link and password to join in the meeting.

In attendance:

Bob Schoenberger, Chair; Sally Winterton, Vice-Chair; Joe Stoyack, Jim Shrimp, Bob Davidson, Chad Adams, Jeff Smith, Jim Dewees, Al Gaspari – Codes Administrator, Tony Scheivert – Township Manager, Kimberly Venzie, Esq. – Buckley Brion McGuire & Morris, Gwen Jonik – Planning Commission Secretary

Bob Schoenberger called the meeting to order at 7:01 p.m. A quorum was present.

Ordinance Amendments – Review, Discussion

Amendments to the Animal Control ordinances, Chapter 50 of the Township Code, were discussed, including: the proper management of animal waste on public property (a DEP requirements for MS4 compliance), leash requirements (PA State Dog Laws), noise/nuisance, enforcement, fines.

Discussion included: potentially revising the animal waste regulations to cover just dogs as there are challenges picking up after horses, outdoor cats, etc., as well as the types of waste; condense the sections regarding the control of animals; re-word the section regarding animal waste; and who determines the penalties/fines. Kim Venzie will check if that's in the Municipalities Planning Code (MPC) or the Second Class Township Code.

It was decided that the amendments would include all animals, not just dogs, and Kim Venzie will revise the other sections for review at the June meeting.

Wireless Communication Facilities (WCF), Small Wireless Facilities (SWF) Ordinances
Constant changes in communications technologies, we need to update our WCF Ordinance. In anticipation of 5G service, it's suggested we add regulations for small wireless facilities (SWF). Discussion included:

1. Within the SWF, the definition of public right-of-way doesn't include any kind of easements;
2. Regulations to minimize the adverse visual impact are allowed with SWF?;
3. Replace "town center" with "Village District"
4. Exhibits/attachments include photos of acceptable SWF. Kim asks that members who have better pictures for our specific township, forward them to her to include in future drafts. The FCC will support townships if design guidelines have been published beforehand and they're reasonable. The Commission suggested adding photos from the Village Design Guidelines – Gwen Jonik will forward them.

Approval of Minutes

Joe Stoyack moved, seconded by Jeff Smith, to approve as presented the minutes of the April 2, 2020 Planning Commission meeting. The Motion carried unanimously.

Open Session

Gwen Jonik noted the township building renovation is complete and Administration Staff will move back to 140 Pottstown Pike on Monday, May 18.

Jeff Smith commented that the polling locations on June 2 might be different than usual depending on the availability of poll workers and COVID-19 prevention measures.

Bob Schoenberger announced the next Planning Commission meeting is June 11, 2020 and will most likely be a virtual meeting.

Adjournment

Sally Winterton moved, seconded by Jeff Smith, to adjourn at 8:17 p.m. All were in favor.

Respectfully submitted,

Gwen A. Jonik
Planning Commission Secretary