

ORDINANCE NO. 206 207

**AN ORDINANCE OF EVERSON BOROUGH, PENNSYLVANIA, TO
PROVIDE FOR THE PERMITTING AND REGULATION OF SMALL
WIRELESS FACILITIES DEPLOYMENT.**

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania has enacted the Small Wireless Facilities Deployment Act, Act of June 30, 2021, P.L. 232, No. 50 ("Act 50"), with an effective date of August 29, 2021; and

WHEREAS, Act 50 authorizes the Borough of Everson (the "Borough") to adopt ordinances that comply with Act 50 and requires that the Borough amend existing ordinances as necessary to comply with Act 50; and

WHEREAS, the Borough has determined it to be in the best interests of the health, safety, and welfare of the residents of the Borough to enact certain provisions related to the regulation of Small Wireless Facilities pursuant to Act 50 and to repeal existing ordinances that are inconsistent with Act 50.

NOW THEREFORE, BE IT ORDAINED AND ENACTED, and it is hereby ordained and enacted by the Council of the Borough of Everson, Fayette County, Pennsylvania, as follows:

Section 1. Short Title.

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

Section 2. Legislative Intent.

Borough Council enacts this Ordinance 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 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.

Section 3. Word Usage and Definitions.

- a. Word usage. In interpreting this Ordinance, the singular shall include the plural, and the masculine shall include the feminine and the neuter.
- b. Definitions.
 1. All words and phrases not otherwise defined herein shall have the meanings set forth in Section 2 of the Act.
 2. "ACT" The Small Wireless Facilities Deployment Act, the Act of June 30, 2021, P. L. No. 50, 53 P.S. 51 1704. I et seq., and as may be amended in the future.

3. "ADA" The federal Americans with Disabilities Act, as amended, and all regulations adopted to implement such statute.
4. "BOROUGH" The Borough of Everson, Fayette County, Pennsylvania.
5. "BOROUGH COUNCIL" The governing body of the Borough.
6. "CODE ENFORCEMENT OFFICER" The person designated by Borough Council to administer property maintenance and building codes in the Borough.
7. "FCC" The Federal Communications Commission or any agency successor thereto.
8. "ONE CALL" The Pennsylvania one call Act, the Act of December 10, 1974, P. L. 852, as amended, 73 P.S. 5 176 et seq., and all regulations adopted to implement such statute.
9. "UCC" The Pennsylvania Uniform Construction Code, as adopted and administered by this Borough.

Section 4. Permit Application Requirements.

All persons who desire to install a small wireless facility within a right-of-way, whether by colocation 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, or a letter if the Borough does not adopt a form, identifying in detail the name of the applicant and contact information (address, telephone number, fax number and email address) 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. Said form or letter shall be signed by an authorized representative of the applicant.
- 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 Ordinance.
- 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:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. Location of any driveway, mailbox, or utility serving the abutting property.
- g. The manufacturer and model, proposed location, and physical dimensions, including weight and volume, of each piece of equipment proposed as part of the Small Wireless Facility.
- h. A written certification by a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the proposed Small Wireless Facility and Wireless Support Structure are structurally sound and shall not endanger public health and safety.
- i. 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.
- j. 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.

- k. Where a new pole or excavation for any reason is proposed, an application for a street opening permit meeting all requirements of the Borough's Ordinance regarding street openings and the street opening permit fee and evidence of compliance with One Call.
- l. The fee established by this Ordinance.
- m. The application shall not be complete, and the time limits for considering the application under the Act shall not begin to run until all of the required submissions have been received by the Borough Code Enforcement Officer.

Section 5. Submission and Consideration of Applications.

- a. **Submission of Application.** All applications shall be submitted to the Borough Code Enforcement Officer. The time for the Borough to respond to the application shall begin to run when the Borough Code Enforcement Officer actually receives the application. If the applicant uses any method of conveying or delivering the application to the Borough Code Enforcement Officer other than hand delivery, the time for responding to the application still will not begin to run until the Borough Code Enforcement Officer actually receives the application. Delivery to any other Borough employee or officer will not constitute delivery to the Borough Code Enforcement Officer.
- b. **Application Review.** 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.
 - i. Within 10 business days of receiving an Application, the Borough will determine and notify the Applicant in writing whether the Application is incomplete. If the Borough determines that an Application is incomplete, the written notice will specifically identify the information not included with the Application. The time for the Borough to process the application shall restart on the date the Applicant provides all of the information required to complete the Application. The processing deadline may be tolled or extended by a written agreement of the Applicant and the Borough.
 - ii. The Borough shall process Applications on a nondiscriminatory basis and Applications shall be deemed approved if the Borough fails to approve or deny the Application within 60 days of receipt of a complete Application to collocate and within 90 days of receipt of a complete Application to replace an existing Utility Pole or install a new Utility Pole with Small Wireless Facilities attached. A Permit associated with an Application deemed

approved under this subsection shall be deemed approved if the Borough fails to approve or deny the Permit within seven business days after the date of filing the Permit Application with the Borough unless there is a public safety reason for the delay. An Applicant shall provide written notice to the Borough within 72 hours of when it discovers that a deemed approval has occurred. Written notice may be received by USPS or courier.

- iii. Where the Borough denies an Application because of defects found therein, the Applicant may cure the deficiencies identified by the Borough and resubmit the Application within thirty (30) days of receiving the written basis for the denial. No Permit Application fee is required for an Application resubmitted pursuant to this section. Following resubmission, the Borough shall approve or deny the Application within thirty (30) days of the resubmission date. An Applicant shall not be entitled to more than one submission.
- c. The Borough will notify the Applicant of the decision on the application. If the application is denied, the Borough will indicate the reason for the denial. The Applicant may appeal a denial to the Borough Council by filing written notice of the appeal within thirty (30) days of the date of the decision.

Section 6. Issuance of Permit.

- a. If the application meets all requirements of the Act and this Ordinance, 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 Ordinance 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 Ordinance and the Act and the permit holder has obtained all necessary consents from the utility pole owner.

Section 7. 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 in 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.

Section 8. 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 Ordinance and all standards of the UCC and FCC. If the small wireless facility is the only facility on a pole, the wireless provider shall maintain the pole in accordance with this Ordinance 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.

Section 9. Damage to Existing Facilities, Indemnification and Insurance.

- a. A wireless provider shall repair all damage to the right-of-way or any other land so disturbed, 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.
- c. Each Permittee and any person who owns or operates a Small Wireless Facility shall annually provide the Borough with a certificate of insurance, in a form satisfactory to the Borough Solicitor, evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Small Wireless Facility and naming the Borough as an additional insured on each insurance policy. All Permits issued for location of a Small Wireless Facility pursuant to this ordinance shall be deemed to be revoked in the event said insurance policy is cancelled, expires, or ceases to exist.

Section 10. 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, 2023, 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 Ordinance and shall be subject to the penalties and remedies in this Ordinance.
- 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 (i.e. 12% per annum) 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 as authorized pursuant to 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 Ordinance 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 Ordinance.
- 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.

Section 11. 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 as authorized by Section 7(c) of the Act.

Section 12. Removal of Small Wireless Facilities from Right-of-Way.

- a. Within 60 days of suspension or revocation of a permit for violation of this Ordinance (including such acts, statutes and/or regulations as this Ordinance incorporates) 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.
- b. Within 90 days of the end of a permit term, if not extended by the Borough in accordance with this Ordinance, 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 Ordinance for a small wireless facility which is voluntarily removed shall expire upon the removal of the small wireless facility. The provider will not be entitled to a refund of any portion of the right of way fee or the application fee.

Section 13. Violations and Penalties.

- a. Violations. It shall be a violation of this Ordinance to do or permit the following:
 - i. To install a small wireless facility prior to obtaining the permit required by this Ordinance.
 - ii. To install a small wireless facility in a manner other than that authorized by the permit.
 - iii. 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.
 - iv. To fail to make any payment required by this Ordinance or to make a payment by a means which is later dishonored.
 - v. To violate any other provision of this Ordinance.

- b. Penalties. Any person who violates or permits the violation of any provision of this Ordinance 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 Ordinance which is violated constitutes a separate violation.

Section 14. Repealer. All Ordinances or parts of Ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance. All other sections, parts and provisions of the Ordinances of the Borough of Everson shall remain in full force and effect as previously enacted and amended.

Section 15. Invalidity. 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 16. Effective Date. This Ordinance shall become effective ten (10) days from the date of its adoption.

THIS ORDINANCE IS DULY ORDAINED AND ENACTED BY THE COUNCIL OF THE BOROUGH OF EVERSON AT A PUBLIC MEETING HELD THE 22nd DAY OF November, 2022.

BOROUGH OF EVERSON

By: [Signature]
President of Council

ATTEST:

[Signature]
Borough Secretary

Approved this 22nd day of November, 2022.

[Signature]
Mayor

ATTEST:

[Signature]
Borough Secretary