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Borough Attorney /s/Darryl Rhone

**BOROUGH OF PENNS GROVE  
COUNTY OF SALEM  
STATE OF NEW JERSEY**

**ORDINANCE No. 2022-23**

Councilperson \_\_\_\_\_ presents the following Ordinance:

**AN ORDINANCE ESTABLISHING PROCEDURES AND STANDARDS REGARDING  
DEPLOYMENT OF SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY  
IN THE BOROUGH OF PENNS GROVE**

**WHEREAS**, the wireless communications industry has expressed interest in submitting applications to utilize space in public rights-of-way within BOROUGH OF PENNS GROVE (“BOROUGH OF PENNS GROVE” or “Borough”) for the installation of small cell wireless telecommunications facilities (hereinafter "Small Wireless Facilities") in connection with the industry's efforts to expand and/or upgrade existing 4G Facilities and as part of the construction of a nation-wide 5G Facilities network; and

**WHEREAS**, the BOROUGH OF PENNS GROVE support these investments and deployment of wireless networks in a way that balances our community character, needs, and interests while preserving the BOROUGH OF PENNS GROVE's ability to manage public rights-of-way in the overall interests of the public health, safety and welfare; and

**WHEREAS**, the BOROUGH OF PENNS GROVE recognizes that Small Wireless Facilities often are most effectively deployed in public rights-of-way and that the rules and regulations of the Federal Communications Commission require municipalities to make rights of way available subject to local police power regulations; and

**WHEREAS**, multiple installations of Small Wireless Facilities within the public right-of-way can impact property values, create traffic and pedestrian safety hazards, impact shade trees where proximity conflicts may require trimming of branches or require removal of roots and create visual and aesthetic blights all of which can negatively impact the quality and character of life within the BOROUGH OF PENNS GROVE; and

**WHEREAS**, the BOROUGH OF PENNS GROVE wishes to preserve the aesthetics of the community by encouraging the location of Small Wireless Facility equipment on existing or previously approved infrastructure; and

**WHEREAS**, A September 2018 Ruling and Order of the Federal Communications Commission ("FCC") and subsequent federal court decision impacting that ruling imposes certain restrictions and preemptions on the exercise of local authority when dealing with small wireless facilities.

**WHEREAS**, the BOROUGH OF PENNS GROVE's needs to amend its municipal code to address the legal and practical issues that arise in connection with multiple Small Wireless Facility installations deployed in the public rights-of-way; and

**WHEREAS**, in light of the foregoing, this governing body is of the opinion that the adoption of this Ordinance is in the best interest of the BOROUGH OF PENNS GROVE and the health, safety and welfare of its residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED** by the Members of Council of the TYPE OF GOVERNMENT of BOROUGH OF PENNS GROVE, in the COUNTY OF SALEM, State of New Jersey, as follows:

**Section One. Definitions.**

- A. All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.
- B. All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et. seq.*, are incorporated herein and are made apart hereof.
- C. All of the definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 C.F.R. §1.6002, as amended, are incorporated herein and are made a part hereof.
- D. In addition to the foregoing, the following words, terms and phrases shall have the meanings indicated unless an alternate meaning clearly is discernable from the context in which the word, term or phrase is used:

*Administrative Review* means ministerial review of an Application by the Borough to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.

*Antenna* means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

*Applicable Codes* means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Authority, including any amendments adopted by the Authority, or otherwise are applicable in the jurisdiction.

*Applicant* means any Person or Entity who submits an Application under this Chapter, such as a Provider described herein.

**Application** means a written request, on a form provided by the Borough of Penns Grove.

**Authority** means the Municipal Council of the Borough of Penns Grove. The term "Authority" and "Borough" are interchangeable.

**Collocate** means to install or mount a Small Wireless Facility in the Public Right-Of-Way on an existing Support Structure, on an existing Pole, on a new pole, or smart pole.

**"Collocation"** has a corresponding meaning.

**Communications Facility** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communications Services, including; (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole or Support Structure to which the equipment is attached.

**Communications Service** means cable service, as defined in 47 U.S.C. § 522(6); information service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

**Communications Service Provider** means a provider of Communications Services and includes a cable operator as defined in 47 U.S.C. § 522(5).3

**Consultant** means any Person appointed by the Borough to serve as a consultant for the Borough for all matters concerning this Chapter, and who may be contracted for professional services.

**FCC** means the Federal Communications Commission of the United States.

**Laws** means, collectively, any and all Federal, State or Local law, statute, common law, code, rule, regulation, order, or ordinance.

**Ordinary Maintenance and Repair** means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a communications Facility and/or the associated Support Structure or Pole, that does not require blocking, damaging or disturbing any portion of the Public ROW.

**Permit, "R.O.W. Permit" or "Small Cell Permit"** means a written authorization to install, at a specified location(s) in the Public ROW, a Communications Facility or a Pole to support a Communications Facility.

**Permittee** means an Applicant that has received a Permit under this Chapter.

**Person** means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a governmental entity.

### ***Personal Wireless Services***

"Personal Wireless Services," as defined in 47 U.S.C. §332(c)(7)(C), as supplemented and/or as amended.

### ***Public Right-of-Way***

The surface, the airspace above the surface and the area below the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and area for utilities owned by the BOROUGH OF PENNS GROVE of BOROUGH OF PENNS GROVE.

### ***Small Wireless Facility***

"Small Wireless Facility," as defined in the Code of Federal Regulations at 47 C.F.R. §1.6002(1), as supplemented and/or as amended. **Small wireless facility** means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty-five (25) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

### ***Smart Pole***

A decorative utility pole that conceals three or more Small Wireless Facility installation(s) and may include other features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for multiple occupants and allow space for municipal use for other services and/or equipment. Smart Poles shall neither have external latches, external hinges, external cabling, or other attachments. The pole should be made of an inherently rust-resistant material (ie. aluminum alloys or stainless steel).

### ***Utility Pole***

A wooden or metal pole that is used by public utilities to support electrical wires, telephone wires, coaxial cables, fiber optic cables and like and similar appurtenances.

### ***Wireless Communications Infrastructure***

Infrastructure designed specifically for the purpose of supporting wireless facility equipment deployments, including large-scale (macro) collocatable infrastructure as well as Small Wireless Facilities Infrastructure

### ***Small Wireless Facilities Infrastructure***

A Smart Pole meeting the above definition or other collocatable infrastructure designed or deployed for the purpose of supporting small wireless facility, the types of which may be approved by geographical zones as defined by BOROUGH OF PENNS GROVE



- E. In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined herein then that term, word or phrase shall have its common, ordinary meaning.

**Section Two. Small Wireless Facility Siting Permit Required; Consent to Use Rights-of-Way Required.**

- A. No person shall place a Small Wireless Facility in any right-of-way without first filing a Small Wireless Facility siting permit application, in the form specified herein and in accordance with the procedures specified herein, with the BOROUGH OF PENNS GROVE Clerk and obtaining a siting permit therefore, except as otherwise may be provided in this ordinance. Upon approval of a siting permit application, the siting permit authorizing placement of a Small Wireless Facility in a public right-of-way shall not be issued by the BOROUGH OF PENNS GROVE Clerk to any Applicant unless:
  - 1. All siting permit application fees and escrow fees, as established herein, have been paid; and
  - 2. All other governmental permits or other governmental approvals that are required for the deployment(s) proposed by the Applicant's siting permit application under the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-1 19, et. seq., and the administrative regulations adopted thereunder, Street Openings, of the Code of the BOROUGH OF PENNS GROVE, and by any other applicable federal, state or municipal law have been issued by the appropriate issuing authority therefore to the Applicant and the Applicant has supplied copies of such other permits or approvals to the BOROUGH OF PENNS GROVE Clerk for inclusion with the Applicant's application documents; and
  - 3. The Applicant has entered into a "Right-of-Way Use Agreement," the approved form of which is set forth in Appendix "A" to this ordinance, with the BOROUGH OF PENNS GROVE. The approved form of "Right-of-Way Use Agreement" may from time-to-time be revised, supplemented or otherwise amended or replaced. All such revisions, supplements, amendments or replacements shall be approved by Resolution of BOROUGH OF PENNS GROVE Council. The BOROUGH OF PENNS GROVE Clerk shall maintain on file the currently approved Right-of-Way Use Agreement version and shall provide a copy to all siting permit applicants. Minor deviations to the terms and conditions that are set forth in the approved form of Right-of-Way Use Agreement may be approved by BOROUGH OF PENNS GROVE Council at the time that it grants consent to use a right-of-way to a siting permit Applicant.
- B. No siting permit authorizing placement of a Small Wireless Facility in a public right-of-way shall be issued to any Applicant unless BOROUGH OF PENNS GROVE Council, in the manner prescribed by applicable laws of the State of New Jersey, has granted to the siting permit Applicant its consent to use public

rights-of-way within the BOROUGH OF PENNS GROVE. No siting of a Small Wireless Facility shall be permitted within five-hundred (500) feet of another Small Wireless Facility unless it can be established by clear and convincing evidence that compliance with these regulations would effectively prohibit the applicant from providing service and that co-location on an existing or previously approved Small Wireless Facility is not feasible. Any claims of applicants of technical incompatibility or inability to collocate need to be demonstrated scientifically by the applicant how technical incompatibility exists, not disproven by the Borough of Penns Grove. Responsibility for judging proof of said claims lies solely with the Borough of Penns Grove and/or or its chosen representative(s).

### **Section Three. Installation of New Structures; Installation on Existing Structures.**

- A. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility upon an existing structure in a right-of-way unless the structure is one of the types of Smart Poles that are set forth in Section One: Definitions to this ordinance and such Smart Pole specifically is designed to accommodate the reasonable and customary equipment necessary for a Small Wireless Facility installation which will accommodate at least three carriers per Small Wireless Facility deployment. Any exception to this requirement must be accompanied by clear and convincing evidence that co-location on an existing or previously approved Small Wireless Facility is not feasible. Any claims of applicants of technical incompatibility or inability to comply with this requirement need to be demonstrated scientifically by the applicant, not disproven by the Borough of Penns Grove. Responsibility for judging proof of said claims lies solely with the Borough of Penns Grove and/or or its chosen representative(s).
  
- B. No Small Wireless Facility shall be installed upon any new structure within any right- of-way unless the new structure is one of the types of Smart Poles that are identified in Section One: Definitions to this ordinance. A replacement pole is a new structure. The restrictions on new structures set forth herein shall not apply to new structures to be constructed as set forth in subsequent Ordinances.
  
- C. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the Borough's Wireless Siting Plan, which can be found on file with the Office of the Borough Clerk. All Small Wireless Facilities must be placed within a 25 ft. radius of those specific locations set forth on the Borough's Wireless Siting Plan. No more than one (1) Smart Pole shall be permitted per intersection or block if the Siting Plan calls for the deployment of a Small Wireless Facility at any location other than an intersection, unless otherwise specified within the Wireless Siting Plan. No Smart Poles shall be located within 500 ft. of another. Any claims of carriers of technical incompatibility or inability to comply with this requirement need to be proven by the carrier, not disproven by the Borough of Penns Grove. Responsibility for judging proof of said claims lies solely with the Borough of Penns Grove and/or or its chosen representative(s).

#### **Section Four. Siting Permit Application Process.**

- A. Application Filing. An application for a siting permit to place one or more Small Wireless Facility within a right-of-way shall be made on forms which shall be available from the Office of the BOROUGH OF PENNS GROVE Clerk. The application, along with the required application fee and the required escrow fee, shall be filed with the BOROUGH OF PENNS GROVE Clerk. Immediately upon receipt of an application, the BOROUGH OF PENNS GROVE Clerk shall provide copies of the application and all supporting documents that were submitted by the Applicant with the application, to the BOROUGH OF PENNS GROVE Engineer, Zoning Official, Construction Official and the BOROUGH OF PENNS GROVE Solicitor.
- B. Application Form. The Small Wireless Facility siting permit application shall be made by a provider of personal wireless services, its duly authorized representative, as noted in a notarized statement from the provider of personal wireless services, on whose behalf the representative is acting, or an entity in the business of deploying wireless communications facilities or infrastructure, and shall contain the following:
1. The Applicant's name, address, telephone number and e-mail address;
  2. 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;
  3. A general description of the proposed Small Wireless Facility, existing structure and new structure work to be performed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with particular emphasis on those matters, including, but not limited to, subsurface utilities likely to be affected or impacted by the work proposed along with a description of such other governmental permits or approvals as may be required by applicable law with respect to the proposed installation(s) and a description of such other permits or approvals for which the Applicant has applied;
  4. Authorization for any consultant acting on behalf of the Applicant to speak with the BOROUGH OF PENNS GROVE, or a designee of the BOROUGH OF PENNS GROVE, on the area of consultation for the Applicant even if the Applicant cannot be available;
  5. Verification via sworn statement from an appropriate professional that the Small Wireless Facility shall comply with all applicable federal, state and local laws, administrative regulations and codes;
    - a. With respect to radio frequency emissions, Applicant must provide a sworn statement from a qualified radio frequency engineer that the Application will comply with all applicable Federal, State, and Local laws regarding radio frequency emissions

6. The Applicant shall certify that they shall make available approved facilities to all major wireless carriers in the marketplace. The Applicant shall further certify that they will encourage, manage and coordinate the location and placement of any interested carrier's equipment on their structure.
- C. An Applicant seeking to deploy a network of Small Wireless Facilities, all of which are to be located in rights-of-way, may file a batched application for up to twenty-five (25) Small Wireless Facilities and receive a single siting permit for multiple Small Wireless Facilities. Any denial of any individual Small Wireless Facilities within a batched application, will not impact the consideration of other sites within the same application.

**Section Five. Procedure on Permit Application; No Exclusive Rights.**

- A. The BOROUGH OF PENNS GROVE shall review the application for a Small Wireless Facility siting permit in light of its conformity with the provisions of this Ordinance, and shall approve or deny a siting permit on nondiscriminatory terms and conditions subject to the following requirements:
  1. Within ten (10) days of receiving an Application, the BOROUGH OF PENNS GROVE Clerk shall determine and notify the Applicant:
    - (a) Whether the Application is complete;
    - (b) If the Application is incomplete, what specific information is missing; and
- B. The BOROUGH OF PENNS GROVE shall make its final decision to approve or deny the Application within the following timeframes:
  - (1) Sixty (60) days from the submission of a complete application to install a Small Wireless Facility upon one or more existing structures.
  - (2) Ninety (90) days from the submission of a complete application to install a Small Wireless Facility upon one or more new structures.
  - (3) Ninety (90) days from the submission of a complete batched application to install Small Wireless Facilities upon both existing and new structures.

The timeframes described above by which an application shall be either approved or denied may be extended by mutual consent of the Applicant and BOROUGH OF PENNS GROVE. Such consent shall be set forth on a form for such purposes which shall be available from the Office of the BOROUGH OF PENNS GROVE Clerk. Such consent on behalf of the BOROUGH OF PENNS GROVE shall be exercised by the Mayor of Borough Administrator in his/her reasonable discretion.

- C. The BOROUGH OF PENNS GROVE Clerk shall notify the Applicant in writing of the final decision, and if the Application is denied, Specify the

basis for denial; and Cite such specific provisions, as may be recommended by the BOROUGH OF PENNS GROVE Solicitor, from federal, state, or local laws, administrative regulations or codes as to why the Application was denied.

- D. Notwithstanding an initial denial, the Applicant may cure any deficiencies identified by the BOROUGH OF PENNS GROVE within thirty (30) days of the denial without paying an additional application fee, provided the BOROUGH OF PENNS GROVE Clerk shall approve or deny the revised application within thirty (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial.
- E. A siting permit from the BOROUGH OF PENNS GROVE authorizes an Applicant to undertake only certain activities in accordance with this ordinance. No approval or consent granted, or siting permit issued, pursuant to this ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use any public right-of-way within the BOROUGH OF PENNS GROVE for the delivery of telecommunications services or for any other purpose.
- F. Nothing in this section affects an applicant's obligation to apply for other permits that may be required under this code, such as street opening permits or construction permits, for which the Applicant has not yet applied. No Small Wireless Facility siting permit shall be approved until the Applicant has applied for all other permits and approvals required by all other laws and regulations that are applicable to the Applicant's proposed Small Wireless Facility deployment.

#### **Section Six. Duration.**

No siting permit issued under this ordinance shall be valid for a period longer than twelve (12) months unless construction has actually begun and continuously and diligently is pursued to completion. Upon written request from the Applicant, the Mayor, upon consultation with the Construction Official, may extend the siting permit for a period of up to twelve (12) months so long as construction has begun at the time that the Applicant's request for an extension is made.

#### **Section Seven. Routine Maintenance and Replacement.**

A Small Wireless Facility siting permit shall not be required for:

- A. Routine maintenance of a Small Wireless Facility.
- B. The replacement of a Small Wireless Facility with another Small Wireless Facility that is the same or smaller in size, weight and height to the Small Wireless Facility that is being replaced.
- C. Provided, however, that on a location where the BOROUGH OF PENNS GROVE and/or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written



authorization from the BOROUGH OF PENNS GROVE and/or the other provider, as the case may be, to proceed is provided to the BOROUGH OF PENNS GROVE, which authorization to proceed shall not unreasonably be withheld by the BOROUGH OF PENNS GROVE and/or the other provider.

- D. Provided further that if the replacement of a Small Wireless Facility with another Small Wireless Facility includes replacement of the structure to which the Small Wireless Facility is attached then an application for a siting permit shall be required.
- E. Notwithstanding anything to the contrary in this section 7, permits are required for any activity that involves any road closure or other activity that will impact vehicle or pedestrian traffic.

#### **Section Eight. Fees.**

- A. Application Fees. All applications for approval and issuance of a Small Wireless Facility siting permit pursuant to this ordinance shall be accompanied by a fee as follows:
  - 1. For applications that do not include the installation of any new structures within a right-of-way the application fee shall be \$500.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).
  - 2. For applications that include the installation of a new structure within a right-of- way the application fee shall be \$1000.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).
- B. Other Fees: No pole attachment fees will be assessed by the Borough unless and until an applicant applies for pole attachment to a Borough-owned pole
- C. Annual Rate: \$270 Annual ROW Maintenance Rate per small wireless facility, starting on the anniversary of the permit

#### **Section Nine. Escrow Fee for Third-Party Professionals and Consultants.**

- A. In addition to the application fee, all applications for approval and issuance of a Small Wireless Facility siting permit shall be accompanied by an escrow fee as follows:
  - 1. For applications whose proposed Small Wireless Facility deployment(s) will not require a street opening permit pursuant to site code and Borough of Penns Grove: \$5,000.00.
  - 2. For applications whose proposed Small Wireless Facility deployment(s) will require a street opening permit pursuant to site code and Borough of Penns Grove: \$7,500.00.



- B. The escrow account deposits are required to pay for the costs of professional services, including engineering, planning, legal and other third-party professional consulting expenses connected with the review of submitted materials, including any traffic engineering review or other special analyses related to the BOROUGH OF PENNS GROVE's review of the materials submitted by the Applicant and the preparation of any reports or any necessary legal agreement regarding rights-of-way use. An Applicant is required to reimburse the BOROUGH OF PENNS GROVE for all fees, costs and expenses of third-party professionals and consultants incurred and paid by the BOROUGH OF PENNS GROVE for the review process of a Small Wireless Facility siting permit application, such as, but not limited to:
1. Professional fees for reviews by third-party professionals or consultants of applications, plans and accompanying documents;
  2. Issuance of reports or analyses by third-party professionals or consultants to the BOROUGH OF PENNS GROVE setting forth recommendations resulting from the review of any documents submitted by the Applicant;
  3. Charges for any telephone conference(s) or meeting(s), including travel expenses, requested or initiated by the Applicant, the Applicant's attorney or any of the Applicant's experts or representatives;
  4. Review of additional documents submitted by the Applicant and issuance of reports or analyses relating thereto;
  5. Review or preparation of easements, deeds, right-of-way municipal consent ordinances or resolutions and any and all other like or similar documents; and
  6. Preparation for and attendance at all meetings by third-party professionals or consultants serving the BOROUGH OF PENNS GROVE, such as the BOROUGH OF PENNS GROVE Attorney, BOROUGH OF PENNS GROVE Engineer and BOROUGH OF PENNS GROVE Planner or other experts as required.
- C. The escrow account deposits shall be placed in a separate account by the BOROUGH OF PENNS GROVE's Chief Financial Officer at the request of the BOROUGH OF PENNS GROVE Clerk and an accounting shall be kept of each Applicant's deposit. Thereafter:
1. All third-party professional or consultant fees, costs, expenses and charges shall be paid from the escrow account and charged to the applicant;
    - a. Third-party professional or consultant fees shall not be disbursed from escrow if they are for a service performed in the context of an identical paid service between applicant and same third-party who may otherwise be entitled to said fees.

2. Upon either final denial of a Small Wireless Facility siting permit application or upon issuance of a Small Wireless Facility siting permit, any moneys not expended for third-party professional or consulting services shall be returned to the Applicant within 90 days upon written request by the Applicant and as authorized by the BOROUGH OF PENNS GROVE Council;
3. If at any time during the application review process 75% of the money originally posted shall have been expended, the Applicant shall be required to replenish the escrow deposit to 100% of the amount originally deposited by the Applicant;
4. No Small Wireless Facility siting permit application shall be considered complete until such time as the required escrow fee has been posted to guarantee payment of third-party professional or consultant fees, costs, expenses and charges;
5. All payments charged to the escrow deposit shall be pursuant to vouchers from the third-party professionals or consultants stating the hours spent, the hourly rate and the fees, costs, expenses and charges incurred;
6. Third-party professionals and consultants submitting charges pursuant to this section shall be permitted to charge for such services at the same rates as they would charge their private clients for like or similar work provided that:
  - (a) Professional fees are billed at rates that do not exceed such professional fees as are customarily charged by other like professionals and consultants performing similar work within COUNTY; and
  - (b) Out-of-pocket costs, expenses and charges are billed on a dollar-for-dollar basis with no mark-up being permitted;
7. The BOROUGH OF PENNS GROVE shall render a written final accounting to the Applicant on the uses to which the escrow deposit was put. The written final accounting shall include copies of all vouchers that were submitted by third-party professionals and consultants and paid by the BOROUGH OF PENNS GROVE.

#### **Section Ten. Municipal Access to New Structures.**

An Applicant whose siting permit includes the installation of any new Smart Pole structure of any of the types that are defined in in Section One: Definitions to this ordinance shall provide the BOROUGH OF PENNS GROVE with access to space within the Smart Pole structure for the purpose of deploying BOROUGH OF PENNS GROVE'S own equipment including but not limited to, public access Wi-Fi, 911 call service or security cameras. Notwithstanding the foregoing, the Municipal use shall not interfere

with Small Wireless Facilities of any other users of that Smart Pole. Any Municipal use pursuant to this section shall include a reimbursement to the applicant, on an annual basis, of the costs, on a dollar-for-dollar basis, of providing the BOROUGH OF PENNS GROVE with such access. Such costs shall be limited to the costs of providing electricity to the components used by the BOROUGH OF PENNS GROVE and the costs of any repairs required to be made to the components used by the BOROUGH OF PENNS GROVE, unless the repair costs are necessitated by the acts of the Applicant or subsequent owner of the structure, without regard to whether such acts are negligent or intentional.

**Section Eleven.**

All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

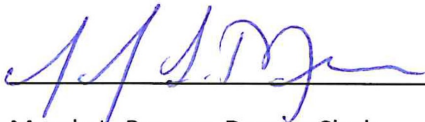
**Section Twelve.**

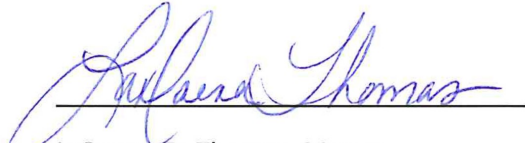
Notwithstanding any provision to the contrary, nothing in this code should be interpreted to have the effect of prohibiting or effectively prohibiting the deployment of broadband or other communications services

**Section Thirteen.**

This Ordinance shall take effective immediately upon final passage and publication as provided by law.

ATTEST:

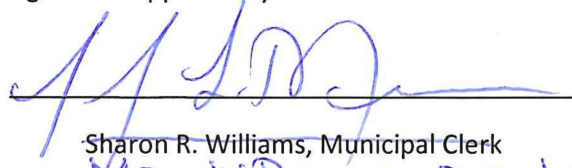
  
 \_\_\_\_\_  
 Mandy L. Renner, Deputy Clerk

  
 \_\_\_\_\_  
 LaDaena D. Thomas, Mayor

**Intro:**

Council	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
Carter	X		X			
Martin			X			
Mincey			X			
Rambo		X	X			
Scarpaci			X			
Worley						X

**Notice:** The above ordinance was introduced and passed on the first reading at the meeting of the Mayor and Council of the Borough of Penns Grove in the County of Salem held on December 8th, 2022 and will be considered for final passage at a meeting to be held by the Mayor and Council at Borough Hall, Broad Street and State Street, Penns Grove, New Jersey on 12/20, 2022 at which time any interested person will be given an opportunity to be heard.



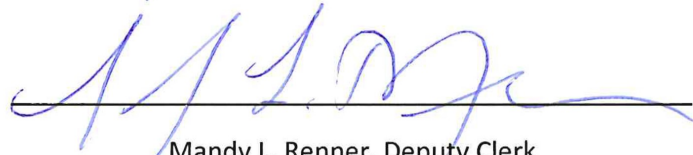
Sharon R. Williams, Municipal Clerk

Mandy Renner, Deputy Clerk

**FINAL:**

Council	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
Carter			X			
Martin		X	X			
Mincey			X			
Rambo			X			
Scarpaci			X			
Worley	X		X			

**Notice:** The above ordinance was introduced and passed on the first reading at the meeting of the Mayor and Council of the Borough of Penns Grove in the County of Salem held on December 8, 2022 and was adopted, after a public hearing was held by the Mayor and Council at Borough Hall, 1 State Street, Penns Grove, New Jersey on 12/20, 2022.



Mandy L. Renner, Deputy Clerk