

**CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2376-18

“RIGHT-OF-WAY MANAGEMENT ORDINANCE”

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF
CHELTENHAM TOWNSHIP, MONTGOMERY COUNTY,
PENNSYLVANIA AMENDING CHAPTER 255 ENTITLED
“STREETS AND SIDEWALKS” TO INSTITUTE ADDITIONAL
REGULATIONS MANAGING THE RIGHTS-OF-WAY OF THE
TOWNSHIP**

WHEREAS, the Board of Commissioners seeks to add regulations to manage the street rights-of-way of the Township to preserve the Township’s control over its rights-of-way.

NOW, THEREFORE, the Board of Commissioners of the Township of Cheltenham hereby ordains as follows:

SECTION I. - Amendment to the Code

Chapter 255, Street and Sidewalks is hereby amended to add a new Article III as follows (new terms underlined):

ARTICLE III.

§255-23. Short Title.

This Article shall be known as the “Cheltenham Township Right-of-Way Management Ordinance.”

§255-24. Definitions.

Terms used in this Article shall have the following meanings, whether or not the terms are capitalized. Unless otherwise expressly stated, terms not defined in this Article shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, with their common and ordinary meaning.

Aerial facilities—poles, wires, cables, equipment, and other facilities located above the surface of the ground, including their underground supports and foundations. Such term does not include private driveways, newspaper vending machines, street banners, canopies or other minor obstructions located in the rights-of-way.

Affiliate—a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

Cable Act—the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as hereafter amended (47 U.S.C. §521 et seq., as hereafter amended).

Cable franchise or franchise—right-of-way use authorization pursuant to this Article authorizing a person to own, construct, operate and maintain a cable system to provide cable service within the Township.

Cable franchise agreement—right-of-way use authorization required pursuant to the Cable Act and the Township Code for any cable franchise issued by the Township.

Cable operator—a person providing or offering to provide cable service over a cable system within the Township as that term is defined in the Cable Act.

Cable service—the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system—facilities consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Township; but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. §573; or, (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to a cable system refers to any part thereof. This definition of “cable system” shall in no way be deemed to circumscribe or limit the valid authority of the Township to regulate or authorize the facilities and/or services of any other telecommunications provider or other person that owns, constructs, operates, or maintains facilities in the right-of-way.

Communications Act—the Communications Act of 1934, 47 U.S.C. §151 et seq., as amended and as hereafter amended.

Emergency—a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

Facility(ies)—conduit, pipes, cables, wires, lines, towers, optic fiber, poles, associated equipment and appurtenances, and any other facilities located in the right-of-way and designed, constructed, and/or used, by telecommunications providers, public utilities, or other persons for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, or any other form of energy, signal or substance. The term “facility” or “facilities” does not include “wireless telecommunications facilities” as defined below.

Franchise—a right-of-way use authorization pursuant to this Article that authorizes a person to own, construct, operate and maintain a cable system to provide cable service within the Township.

Franchisee—a person that is issued a franchise by the Township.

Franchise agreement—a cable franchise agreement.

Information service—the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications (whether over a cable system, telecommunications system, open video system, or any other type of facilities), and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Non-tower wireless communications facility (non-tower WCF)—all non-tower wireless communications facilities including, but not limited to, antennae and related equipment non-tower WCF shall not include support structures for antennae and related equipment.

Permittee—the recipient of a right-of-way use permit, cable franchise or other right-of-way use authorization that is issued by the Township pursuant to this Article, and persons holding existing franchises, special ordinances, or other authorizations that are subject to the transitional provisions set forth in §255-27 of the Township Code.

Person—corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, and other entities; municipal, industrial development, housing, redevelopment, and other authorities and corporations established pursuant to statutes of the Commonwealth of Pennsylvania; and individuals; provided, that person does not include or apply to the Township or to any department or agency of the Township.

Policies and procedures—the written regulations, standards, operations and/or courses of action established by the Township to implement the provisions of this Article.

Public Utilities Commission or PUC—the State administrative agency, or lawful successor thereto, authorized to regulate and oversee public utilities and telecommunications providers and telecommunications services in the Commonwealth of Pennsylvania, to the extent provided by law.

Public utility or utility—shall be defined as that term is defined in the Pennsylvania Code as of the effective date of this Article, and as hereafter amended.

Right-of-way, rights-of-way or ROW—the surface of and space above and below any real property in the Township in which the Township has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited, to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the Township, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes but excluding lands other than streets that are owned by the Township. The phrase “in the right(s)-of-way” and means “in, on, over, along, above and/or under the right(s)-of-way.”

Right-of-way use authorization or ROW use authorization—a right-of-way use permit or cable franchise issued pursuant to this Article.

Right-of-way use permit or ROW use permit—a right-of-way use permit issued pursuant to this Article.

Service(s)—any telecommunications service, cable service, video programming service, information service, utility service (including, but not limited to, electric, gas, water, or steam service), or other form of service provided by means of facilities located in the right-of-way.

Street—a strip of land or part thereof within the right-of-way, whether dedicated or not, that is intended or used for vehicular and pedestrian traffic. The phrase “in the (a) street(s)” means “in, on, over, along, above and/or under the (a) street(s).”

Street opening permit—a permit for excavation of a street for the construction or installation of facilities in any right-of-way in the Township including, but not limited to, installation of underground conduit, ducts, manholes, handholes, and/or appurtenances thereto, or any other type of underground facilities; for construction or erection of poles; for installing fiber optic or other cable(s) in already installed conduit or ducts; for maintenance activities that involve such construction, installation, or erection; or otherwise for the installation or construction of facilities in any right-of-way.

System—any cable system, telecommunications system, or integral part thereof.

Telecommunications—the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications facilities—the plant, equipment and property within the Township used to transmit, receive, distribute, provide or offer telecommunications service.

Telecommunications provider—a person who provides telecommunications service over telecommunications facilities.

Telecommunications service—the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications system—a system that offers telecommunications service.

Tower-based wireless communications facility (tower-based WCF)—any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles and hub facilities for distributed antenna systems.

Township Code—the Code of the Township of Cheltenham, Montgomery County, Pennsylvania.

Township Engineer—the person engaged by the Township to perform engineering services on behalf of the Township.

Township property—all real property now or hereafter owned by the Township whether in fee ownership or other interest.

Township work—all construction work performed by the Township or any of its Departments, either with its own personnel or under contract, including repair, alteration, replacement, or maintenance of facilities owned, operated, maintained, or controlled by the Township or for which the Township is responsible.

Transfer of interest—as applied to a right-of-way use permit and/or the facilities authorized thereby: the assignment, transfer, or other disposition, directly or indirectly, by sale, lease, merger, consolidation, or other act, by operation of law or otherwise, of any interest, in whole or in part, in the ROW use authorization, including, but not limited to, actual control over the ROW use authorization. Any transaction (whether between affiliated entities or unaffiliated entities) which results in any change, in any manner, of the ownership or control (including, but not limited to financial control and actual control) of

the permittee, the facilities authorized thereby, or the capacity, transmission capacity, or bandwidth of the facilities or system, or such ownership or control of any affiliated entities having ownership or control of the permittee, where such ownership or control is 25 percent or more of the total ownership or control interest, shall be considered a transfer of interest.

Underground facilities—utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for aerial facilities.

Wireless telecommunications facility(ies)—the antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless telecommunications services.

§255-25. Right-of-Way Use Authorization.

Except as otherwise provided in this Article, no person shall own, construct, operate and/or maintain facilities in any right-of-way of the Township to provide or to enable others to provide services to persons or areas in the Township or outside the Township without a right-of-way use authorization. The types of right-of-way use authorization are a right-of-way use permit and a cable franchise.

§255-26. Right-of-Way Use Permit.

1. Permit Required; Term and Scope of Permit.

A. Permit. No person, other than a franchisee, may own, construct, operate and/or maintain facilities that occupy the right-of-way without first obtaining a ROW use permit. Any ROW use permit shall be subject to such conditions as the Township may from time to time establish and shall otherwise conform to the requirements of this Article and applicable law. A ROW use permit shall be for a term of 1 year. A ROW use permit and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the Township.

B. Wireless telecommunications facilities. Any person wishing to construct, operate and/or maintain wireless telecommunications facilities, such as tower-based WCFs or non-tower WCFs, that occupy the rights-of-way is required to obtain a ROW use permit pursuant to this Article.

C. Approval by Township. A ROW use permit shall be authorized only by the Township and shall not become effective unless or until so authorized. In addition to the other requirements contained herein, the applicant shall demonstrate:

1. It has a history of compliance with applicable law and regulation relating to the management, construction and maintenance of facilities in streets and rights-of-way, wherever located.

2. It possesses all licenses, permits, authorizations, and other permissions required by the Federal Communications Commission, the PUC, the Commonwealth of Pennsylvania and the Township as a condition of its using the right-of-way and furnishing the services and operating the facilities proposed by the applicant.

D. Security. Each permittee shall furnish to the Township, at the permittee's expense, a bond or other form of financial security, in such form as required by the Township in consultation with the Township Solicitor. Such bond shall be executed by a reputable surety company licensed to do business in the Commonwealth of Pennsylvania. The letter of credit or other

form of financial security shall be in the amount of \$100,000. The security shall be a continuing obligation during the entire term of the right-of-way use permit.

E. *Insurance.* Each permittee shall, at all times during the entire term of the right-of-way use permit, maintain and require its contractors and subcontractors to maintain insurance, with a reputable insurance company authorized to do business in the Commonwealth of Pennsylvania and which has an A.M. Best rating (or equivalent) no less than “A” indemnifying the Township from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of permittee's system or facilities in the rights-of-way. The amounts of such coverage shall be as determined by the Township by regulation. The Township shall be designated as an additional insured under each of the insurance policies required by this Section. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section. Permittee shall provide the Township with at least 30 days advance written notice of any material changes or cancellation of any required insurance policy.

F. *Indemnification.* Each permittee shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of permittee's system or facilities in the rights-of-way. Each permittee shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the permit holder's construction, installation, operation, maintenance or removal of permittee's system or facilities in the rights-of-way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

G. *Application for Right-of-Way Use Permit.* Application for a ROW use permit shall be in such form and shall include such information as the Township determines on forms provided by the Township. Within a reasonable period of time not to exceed 60 days after receiving a complete application hereunder, the Township shall make a determination approving or denying the application. Determinations to grant or deny an application shall be made on a non-discriminatory and competitively neutral basis. If the application is denied, the determination shall include the reasons for denial. The application fee, which shall be paid at the time of the filing of the application, shall be in the amount determined by the Township and authorized by Chapter A300, Fees, of the Township Code. The application fee shall be sufficient to reimburse the Township for the actual costs of Township staff time and other resources that are required and may be adjusted by resolution of Township Board.

H. *As-Built Maps.* Each person applying for a ROW use permit shall submit to the Department two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth in the policies and procedures depicting and certifying the location of all its existing facilities within the right-of-way. Such electronic and paper maps and engineering specifications shall be submitted with the application. If the maps are not provided electronically in the required format, then the person shall reimburse the Township for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format.

I. *Right to Inspect.* The Township shall have the right to inspect all of the facilities of the permittee, including aerial facilities and underground facilities, to ensure health and safety with respect to such facilities, other facilities, the rights-of-way and any other public or private property, and to determine compliance with the terms of this Article and other applicable laws and regulations. Permittees

are required to cooperate with all such inspections and to provide information requested by the Township as part of the inspection.

J. *Use Authorized.* No ROW use permit shall confer any exclusive right or privilege to occupy or use the right-of-way for any purpose; or explicitly or impliedly preclude or affect the Township's right to authorize use of the right-of-way by other persons to own, construct, operate, maintain, and/or provide the same or different facilities or services, or for any other purposes as the Township determines appropriate; or affect the Township's right to construct, operate or maintain any type of facilities itself or offer any type of services in the right-of-way; or authorize, or excuse any person from securing such further easements, leases, permits or other approvals as may be required by applicable law or regulation to occupy and use the right-of-way; or convey any right, title or interest in any right-of-way greater or other than an agreement only to use and occupy the right-of-way for the limited purposes and terms provided in the ROW use permit; or be construed as any warranty of title.

K. *Owner's Consent.* No ROW use permit expressly or impliedly authorizes a permittee to provide any services to, or install any facilities on, any private property without the owner's consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners thereof for such use. It is an affirmative violation of this Article to post bills, signs and other advertisements upon utility poles or private property without the owner's consent.

L. *Certificate of Public Convenience.* Application for a ROW use permit shall be accompanied at the time of submission with a copy to the applicant's certificate of public convenience with the PUC at the expense of the applicant.

2. *Substantially Similar Terms.* ROW use permits and renewals entered into after the effective date of this Article shall contain substantially similar terms which, taken as a whole upon consideration of all of its material terms and upon consideration of the nature of the services to be authorized and other relevant characteristics of applicants, do not provide substantially more or less favorable terms and conditions than those required of other permittees.

§255-27. Transitional Provisions.

A. *Persons Already Authorized to Use the Right-of-Way.* Any person holding a permit or other authorization from the Township to own, construct, operate, and/or maintain facilities in the right-of-way to provide services may continue to conduct those activities expressly authorized until the earlier of the following: (A) the conclusion of the present term of its existing authorization, or (B) 120 days after the effective date of this Article; provided, that in the case of a cable franchise, such authorization shall continue until the expiration of the current term of the cable franchise. Notwithstanding the foregoing, such persons (with the exception of cable franchisees) shall apply for a superseding ROW use permit pursuant to this Article within 90 days after the effective date of this Article and shall be subject to the terms and conditions of this Article.

B. *Pending Applications.* Applications for an authorization to occupy or use the right-of-way that are pending on the effective date of this Article shall be subject to this Article. A person with a pending application shall submit additional information to comply with the requirements of this Article and applicable regulations of the Township governing applications within 30 days from the effective date of this Article.

2. *Persons Operating Without Right-of-Way Use Authorization.* Any person that owns or operates of any facilities currently located in the right-of-way, the construction, operation, or maintenance of which is not currently authorized, but is required to be authorized under this Article, shall have 90 days from the effective date of this Article to file one or more applications for a ROW use

authorization. Any person timely filing such an application shall not be subject to penalties for failure to hold such a ROW use authorization, provided said application remains pending. Nothing herein shall relieve any person of any liability for its failure to obtain any permit or other authorization required under other provisions of this Article, or Township ordinances or regulations, and nothing herein shall prevent the Township from requiring removal of any facilities installed in violation of this Article or Township ordinances or regulations.

§255-28. Cable Franchise.

1. Franchise Required.

A. Prohibition. No person may own, construct, operate or maintain a cable system within the Township or provide cable service over a cable system without a cable franchise issued by the Township.

B. Telecommunications Service. To the extent permitted by law, facilities used to provide telecommunications service, information service or any form of services similar to cable service, that are also used to provide cable service shall be subject to this Article and shall also require a right-way-use permit pursuant to this Article.

2. Effect of Authorization.

A. A cable franchise shall not confer any authority to provide any form or type of telecommunications service or information service in addition to the cable service authorized by the franchise. To the extent permitted by law, a separate right-of-way use permit pursuant to this Article, in addition to the cable franchise, shall be required before any franchisee is permitted to use facilities in the right-of-way to furnish any form or type of telecommunications service or information service.

B. Conflicts. In the event of a conflict between the provisions of this Article and a cable franchise agreement in effect on the effective date of this Article, the provisions of the cable franchise agreement shall govern.

§255-29. Renewal and Transfer of Right-of-Way Use Permit.

1. Renewal of Right-of-Way Use Permit.

A. Application. A person desiring to renew a ROW use permit shall file an application with the Township for renewal of its authorization, which shall include all information and documents required for an initial application and any other information required by the Township by regulation.

B. Determination. Within a reasonable period of time not to exceed 60 days after receiving a complete application for renewal of a ROW use permit, the Township shall make a determination accepting or denying the renewal application. If the renewal application is denied, the determination shall include the reasons for non-renewal. Determinations to grant or deny a renewal application shall be made on a non-discriminatory and competitively neutral basis.

2. Transfer of Interest in Authorization. No transfer of interest in any ROW use permit or the facilities authorized thereby may take place without the prior written consent of the Township. Such consent shall be granted provided that the transfer of interest is consistent with the terms and conditions of the permittee's ROW use permit and this Article, and that the proposed transferee agrees in writing to be bound by such terms and conditions. In addition:

A. Information Required. The permittee and the proposed transferee of a ROW use permit or the facilities authorized thereby shall provide, in addition to all information required by applicable law and regulation, such other information as the Township may reasonably require by regulation in order to determine whether the transfer of interest satisfies the requirements of this subsection.

B. Determination. Upon receipt of all information required herein, and any other information required by regulation, the Township shall within a reasonable period of time, not to exceed 60 days, review and either approve or deny the requested transfer. If the application is denied, the determination shall include the reasons for denial. Determinations to grant or deny an application to assign or transfer shall be made on a non-discriminatory and competitively neutral basis.

3. Renewal and Transfer Costs. All permittees shall, within 30 days after the Township's written demand therefor, reimburse the Township for all costs and expenses incurred by the Township in connection with any renewal or transfer of a right-of-way use permit. Such costs and expenses shall include, but not be limited to, engineering review, inspections, attorneys fees, expert fees and other related expenses.

§255-30. Construction in the Rights-of-Way.

1. Street Opening Permits. No person shall perform any street excavation in the rights-of-way without first obtaining a street opening permit and paying a permit fee pursuant to Chapter A300, Fees, of the Township Code. No person shall perform curb and/or sidewalk construction replacement or repair without first obtaining a permit and paying a permit fee pursuant to the Township Code.

2. Construction Standards. All construction, installation, maintenance, and operation of facilities in the ROW shall conform to the requirements of the following publications, as from time to time amended, and such additional or different standards and specifications as the Township may from time to time establish by regulation: the Pennsylvania Department of Transportation Publication Form 408, National Electrical Code, and the National Electrical Safety Code and Township regulations (collectively, the "Township of Cheltenham ROW Construction Standards").

3. Security. Each person performing construction in the ROW shall obtain, at the permittee's expense, a construction bond in the amount of \$100,000 in such form as required by the Township in consultation with the Township Solicitor. Such security shall be executed by a reputable surety company licensed to do business in the Commonwealth of Pennsylvania.

4. Right to Inspect Facilities. The Township may inspect the construction or installation of any facilities, including both aerial and underground facilities, and any construction or repair activity to ensure health and safety with respect to such facilities, other facilities, the rights-of-way and any other public or private property, and determine compliance with the terms of this Article and other applicable laws and regulations. Permittees are required to cooperate with all such inspections and to provide information requested by the Township as part of the inspection.

5. Interference with the Rights-of-Way. No permittee may locate or maintain facilities in such a manner as to interfere with the use of the right-of-way by the Township, the general public or other persons authorized to construct, install, operate or maintain facilities in the rights-of-way.

6. Relocation or Removal of Facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, a permittee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities within the right-of-way whenever the

Township, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- A. The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way.
- B. The operations of the Township or other governmental entity in the right-of-way.
- C. Vacation of a street or the release of a utility easement.
- D. An emergency as determined by the Township.

7. *Coordination of Construction Activities.* By December 1 of each year, each right-of-way use permittee shall provide the Township with a schedule (including plans and projected start and finish dates for each project) of its planned construction activities for the following year which may affect the rights-of-way. The schedule shall depict all construction activities the permittee is committed to perform within the year. All ROW construction locations, activities and schedules of permittees shall be coordinated with each other and with the Township's planned ROW construction activities, as directed by the Township, to minimize public inconvenience and disruption and prevent damage to public and private property. A person that fails to comply with this subsection may, in the Township's reasonable discretion, be denied street opening permits until the Township determines the person is in compliance.

8. *Abandonment.* Except as otherwise provided for under this Article, a person may abandon any facilities or property in the rights-of-way only after receiving written approval of the Township, following written notice to the Township of the intent to abandon. If the Township receives notice of intent to abandon from such a person, or if the Township determines (after investigation, notice to the owner or other responsible person, and an opportunity to be heard) that facilities or property are abandoned, the Township may determine that the safety, functioning or use of the right-of-way and/or other facilities in the right-of-way will be adversely affected by the abandonment. If the Township makes this determination, the Township may require the person to remove the facilities and property by a specified date or the Township may remove the facilities and property and charge the person for all costs and expenses associated with such removal.

9. *Damage to Facilities or Property.* A permittee, including any contractor working for permittee, shall avoid damage to any facilities and/or public or private property. If any facilities and/or public or private property are damaged by permittee, including any contractor working for permittee, permittee shall promptly repair and restore such property within 10 business days. Permittee shall utilize the Pennsylvania One Call System prior to any disturbance of the rights-of-way and dial adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.

10. *Field Marking.* Each permittee shall field mark the locations of its underground facilities upon request by other permittees or the Township, consistent with the requirements of the Pennsylvania One Call system and at no cost to the Township.

11. *Pole Extensions.* Aerial facilities shall be installed only on existing poles in compliance with the Township's public works, zoning and planning codes and regulations. Pole extensions and extension arms may not be used unless the Township determines in writing in advance that adequate space is not present on the poles and such extensions do not unsafely burden or present a safety hazard to the rights-of-way. Aerial facilities may not be installed or constructed by adding to the height of existing poles without the express written permission of the Township. Permittees may be required to place their facilities underground where the Township determines that adequate space is not present on existing poles.

12. Above-Ground Appurtenances. Persons may place appurtenances above ground in the right-of-way only if such appurtenances are approved by the Township and are so placed that they do not interfere with pedestrian and vehicular traffic and the line-of-sight for traffic in the rights-of-way.

§255-31. Right-of-Way Management Fee.

1. Compensation for Right-of-Way Use. Every ROW use permit is subject to the Township's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the right-of-way. Such compensation for right-of-way use shall be directly related to the Township's actual right-of-way management costs including, but not limited to, the costs of issuing the permit and the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township.

2. Annual Right-of-Way Management Fee. Each permittee that is not a franchisee shall pay an annual fee to the Township to compensate the Township for its costs incurred in connection with reviewing, permitting, inspecting and supervising the ongoing use and occupancy of the right-of-way. The annual right-of-way management fee shall be determined by the Township and authorized by resolution of Township Board and shall be based on the Township's actual ROW management costs as applied to such permittee. This annual ROW management fee shall not be adjusted for at least 2 years from the effective date of this Article, except for purposes of inflation as determined by the National Consumer Price Index published by the United States Department of Labor. Any adjustments to the fee subsequent to 2 years from the effective date shall be authorized by amendment of Chapter A300, Fees, of the Township Code, shall be based on the Township's actual ROW management costs as applied to such permittee and shall be implemented only after providing at least 30 days prior written notice to all then-current permittees. The costs recovered under this subsection shall not include costs recovered by any other fee provided in this Article or in related Chapters.

§255-32. Remedies.

1. Penalties. Any person violating any provision of this Article shall be subject to a judgment from a civil proceeding before a magisterial district judge not exceeding \$1,000, for each and every violation, together with attorneys fees and costs. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any civil penalty imposed by this Article and any other remedy at law or in equity under this Title, the Township may apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Article.

2. Determination of Violation. In the event a determination is made that a person has violated any provision of this Article or a right-of-way use permit, such person shall be provided written notice of the determination and the reasons therefore. Except in the case of an emergency, the person shall have 30 days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Township may, in its reasonable judgment, extend the time period to cure provided the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Township may take any and all actions authorized by this Article and/or Pennsylvania law and regulations.

§255-33. Miscellaneous.

1. Proprietary Information. If a permittee considers information it is obligated to provide to the Township under this Article to be a business or trade secret or otherwise proprietary or confidential in nature, and desires to protect the information from disclosure, then the permittee shall mark such

information as proprietary and confidential. Subject to the requirements of the Right to Know Act of 2009, 65 P.S. §67.101 et seq., as amended, and other applicable law, the Township shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure. The Township shall provide notice to the permittee in the following circumstances: (A) if the Township receives a request for disclosure of such proprietary and confidential information and the Township Solicitor determines that the information is or may be subject to disclosure under applicable law; or (B) if the Township Solicitor determines that the information should be disclosed in relation to its enforcement of this Article or the exercise of its police or regulatory powers. In the event the permittee does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within 30 days following receipt of the Township's notice, then the Township may disclose the information without further notice to the permittee.

2. *Leased Facilities.* Subject to the provisions of this Article and with prior written approval of the Township, a permittee shall have the right to furnish any facilities for which it has the applicable authorization in the right-of-way to another person for the latter's use in constructing or operating its own facilities in the right-of-way; provided, that:

A. The permittee furnishing its facilities to another shall first deliver to the Township written verification that there is a fully signed and executed lease, rental agreement, or other agreement with such other person pursuant to which the facilities are to be furnished.

B. The person to which the facilities are furnished shall comply with all of the requirements of this Article and other applicable laws and policies and procedures, including, but not limited to, obtaining an appropriate right-of-way use authorization from the Township prior to its construction or operation of its facilities; and, if such permittee does not comply with the foregoing requirements, the Township may determine its facilities to be unauthorized facilities.

3. *Duty to Provide Information.* Within 10 days of a written request from the Township, each permittee shall furnish the Township with information sufficient to demonstrate the following: that the permittee has complied with all requirements of this Article; that all fees and taxes due the Township in connection with the services and facilities provided by the permittee have been properly paid by the permittee; and any other information reasonably related to the permittee's obligations pursuant to this Article.

4. *Right to Inspect Records.* The Township shall have the right, upon 30 days written notice and during normal business hours, to inspect all documents, records, maps and other pertinent information maintained by the permittee with that relate directly to the terms and conditions of this Article.

A. *No Substitute for Other Required Permissions.* No ROW use authorization or ROW use permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the Township for the privilege of transacting and carrying on a business within the Township; or any permit or agreement for occupying any other property of the Township.

B. *No Waiver.* The failure of the Township to insist on timely performance or compliance by any permittee holding a right-of-way use authorization shall not constitute a waiver of the Township's right to later insist on timely performance or compliance by that permittee or any other permittee holding such a right-of-way use authorization. The failure of the Township to enforce any provision of this Article on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Article on any other occasion, nor shall the failure to enforce any prior ordinance or Township Charter provision affecting the right-of-way, any facilities, or any user or occupant of the right-

of-way act as a waiver or estoppel against enforcement of this Article or any other provision of applicable law.

5. Policies and Procedures. The Township is authorized to establish such written policies and procedures consistent with this Article as the Township deems necessary for the implementation of this Article.

6. Police Powers. The Township, by granting any permit or taking any other action pursuant to this Article, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable Federal, State and local laws and regulations.

SECTION II. - Disclaimer

Nothing in this Ordinance shall limit, in any manner whatsoever, the Township's right to enforce any ordinance or law of Cheltenham Township, Montgomery County or Commonwealth of Pennsylvania. Nothing in this Ordinance shall be a defense of any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

SECTION III. - Severability

The provisions of this Ordinance are severable, and if any Section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid, or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired thereby.

SECTION IV. - Repealer

Any ordinance or part of any Ordinance conflicting with the provisions of this Ordinance shall be deemed and the same are hereby repealed to the extent of such conflict.

SECTION V. - Failure to Enforce Not a Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

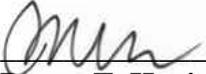
SECTION VI. - Effective Date

This Ordinance shall take effect and be in force as soon after adoption as is permitted by law.

DULY ORDAINED AND ENACTED this 26th day of **September, 2018**, by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, in lawful session duly assembled.

ATTEST:

**TOWNSHIP OF CHELTENHAM
BOARD OF COMMISSIONERS**



Bryan T. Havir
Township Manager and Secretary

By: 
Daniel B. Norris, President