

**Ordinance No. 2015-04**

**TOWNSHIP OF LANCASTER  
Lancaster County, Pennsylvania**

**AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF LANCASTER,  
CHAPTER 231, STREETS AND SIDEWALKS, TO ADD REGULATIONS RELATING  
TO THE MANAGEMENT OF RIGHTS-OF-WAY LOCATED WITHIN THE  
TOWNSHIP**

**BE AND IT IS HEREBY ORDAINED AND ENACTED** by the Board of Supervisors of the Township of Lancaster, Lancaster County, Pennsylvania, as follows:

**Background:** The Board of Supervisors of the Township of Lancaster has determined that the Code of the Township of Lancaster, Chapter 231, Streets and Sidewalks, should be amended to add regulations pertaining to the management of Rights-of-Way within the Township, and that the following text containing new provisions pertaining to Rights-of-Way, should be added to the Code of the Township of Lancaster. Accordingly, the Board has determined that this amendment to the Code of the Township of Lancaster is in the best interests of the Township and should be made. Therefore, the Board of Supervisors hereby adopts the following amendments to Chapter 231:

**ARTICLE III – MANAGEMENT OF RIGHTS-OF-WAY**

**§231-15. Interpretation and Definitions.**

Terms used in this Chapter shall have the following meanings, whether or not the terms are capitalized. Unless otherwise expressly stated, terms not defined in this Chapter 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 aerial facilities located in private driveways, newspaper vending machines or 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 with or control by another person.

**APPLICANT** - Any public utility, including any cable franchise, regulated by the Pennsylvania Public Utility Commission, seeking to obtain from Township a permit for work to be performed within the right-of-way pursuant to a permit issued pursuant to this Chapter. The Applicant shall be the public utility and not any contractor or subcontractor engaged to perform the work which is the subject of the permit.

**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 AGREEMENT** - Right-of-way use agreement required pursuant to the Cable Act and the Township Code for any cable franchise issued by the Township.

**CABLE FRANCHISE FEE** - A fee paid by a cable operator pursuant to a cable franchise agreement for the cable operator's use of the Township's rights-of-way. The fee is calculated as a percentage of the cable operator's gross revenues from the operation of the cable system to provide cable services in the Township.

**CABLE FRANCHISE or FRANCHISE** - Right-of-way use authorization pursuant to this Chapter authorizing a person to own, construct, operate and maintain a cable system to provide cable service or an OVS system to provide OVS service within 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 i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; ii) a facility that serves subscribers without using any right-of-way; iii) 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; iv) an open video system that complies with 47 U.S.C. § 573; or v) 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.

**CARTWAY** - That portion of a street or alley right-of-way that is intended for vehicular movement.

**CERTIFICATE** - A certificate of public convenience issued by the Pennsylvania Public Utility Commission to a public utility.

COMMUNICATIONS ACT - The Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended and as hereafter amended.

DEPARTMENT - The Public Works Department of the Township of Lancaster.

EMERGENCY

A condition that:

- A. Constitutes a clear and immediate danger to the health, welfare, or safety of the public; or
- B. 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, antennas, 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.

FRANCHISE - A right-of-way use authorization pursuant to this Chapter that authorizes a person to own, construct, operate and maintain a cable system to provide cable service or an OVS system to provide OVS service within the Township.

FRANCHISE AGREEMENT - A cable franchise agreement or OVS agreement.

FRANCHISEE - A person that is issued a franchise by the Township.

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-PUC-REGULATED ENTITY or ENTITY - Any corporation, company, association, joint-stock company, firm, partnership, limited liability company, or other entity; municipal, industrial development, housing, redevelopment, and other authority or corporation established pursuant to statutes of the Commonwealth of Pennsylvania; and any individual not regulated as a public utility by the Public Utility Commission.

OPEN VIDEO SYSTEM or OVS - Facilities consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide video programming services, cable service, and/or services similar to cable service to multiple subscribers within the Township and which the Federal Communications Commission or its

successor has certified as compliant with Part 76 of its rules, 47 CFR Part 76.1500 et seq., as amended from time to time, provided that an open video system is not a system of telecommunications facilities and does not provide telecommunications service to the extent that it provides only video services; and provided, further, that an open video system means only those facilities that are operated by a person authorized to provide video services pursuant to Section 653 of the Communications Act of 1934, as amended, 47 U.S.C. § 573, where such person is properly certificated to provide such services pursuant to applicable Federal Communications Commission regulations.

**OPEN VIDEO SYSTEM SERVICE or OVS SERVICE** - Video programming services that are provided over an open video system.

**PERMITTEE** - The recipient of a right-of-way use permit or cable franchise that is issued by the Township pursuant to this Chapter, and persons holding existing franchises, special ordinances, or other authorizations that are subject to the transitional provisions set forth in this Chapter, including the Township, its Departments, agencies, and authorities.

**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.

**POLICIES AND PROCEDURES** - The written regulations, standards, operations and/or courses of action established by the Township to implement the provisions of this Chapter. The preparation and promulgation of policies and procedures are solely the function of the Public Works Superintendent, with the Township adopting the same by resolution.

**PUBLIC UTILITY 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 Public Utility Code as of the effective date of this Chapter, and as hereafter amended.

**PUC REGULATED UTILITY** - Any entity which is operating as a public utility as defined under the Pennsylvania Public Utility Code, and is subject to regulation by the PUC, regardless of whether or not the entity has been issued a certificate of public convenience by the Pennsylvania Public Utility Commission.

**PUBLIC WORKS SUPERINTENDENT** - The Superintendent of the Public Works Department. Except for the preparation and promulgation of policies and procedures, which is solely the function of the Superintendent, such term shall include the employees, agents and assignees of the Director.

**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" means "in, on, over, along, above and/or under the right(s)-of-way."

**RIGHT-OF-WAY USE AUTHORIZATION or ROW USE AUTHORIZATION** - A license, right-of-way use permit, cable franchise, or OVS franchise issued pursuant to this Chapter.

**RIGHT-OF-WAY USE PERMIT or ROW USE PERMIT** - A right-of-way use permit issued pursuant to this Chapter.

**SERVICE(S)** - Any telecommunications service, cable service, OVS 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.

**SYSTEM** - Any cable system, OVS 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.

TOWNSHIP - The Township of Lancaster, Lancaster County, Pennsylvania.

TOWNSHIP CODE - The Code of the Township of Lancaster, Lancaster County, Pennsylvania.

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.

UNDERGROUND FACILITIES - Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for aerial facilities.

**§231-16. Public Utility Commission Regulated Activities**

All public utilities regulated by the Public Utility Commission owning or operating facilities in the Township's rights-of-way shall comply with the following requirements:

- A. License. All public utilities shall be deemed to have a license from the Township under this Chapter to occupy the rights-of-way.
  
- B. As-built maps. Within thirty (30) days of enactment of this Ordinance, each public utility shall submit to the Department two paper copies and one electronic copy of an as-built map or maps and engineering specifications as set forth in the Township policies and procedures pertaining to management of rights-of-way to be promulgated by the Public Works Superintendent and adopted by resolution of the Board of Supervisors from time to time, depicting and certifying the location of all its existing facilities within Township rights-of-way. Such electronic and paper maps and engineering specifications shall be submitted in a format and include the information required by the Township by/in the policies and procedures. If the maps are not provided electronically in the required format, then the utility 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. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S.A. § 708; the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 through 2141.3; and the Public Utility Commission Regulations relating to Confidential Security Information, 52 Pa. Code § 102.1 After submission of the as-built maps required under this section, each public utility having facilities in the Township rights-of-way shall update such maps as required under this Chapter.

C. Right to inspect. The Township may conduct inspections of the Township rights-of-way in order to ensure that utility facilities located within such rights-of-way do not constitute a public safety hazard and remain in compliance with the standards set forth by the Public Utility Commission. Such inspections shall be limited to establishing whether such facilities meet relevant PUC standards and comply with such Township construction standards as relate to the opening and closing of Township streets, curbs, and sidewalks, as provided under 15 Pa.C.S.A. § 1511(e). In the event that the Township determines that any facilities of a utility are not in compliance with such standards, then the Township may bring a complaint against such utility before the Public Utility Commission, in accordance with established PUC procedures. The Township may also elect, in its discretion, to notify the utility of the existence of any noncompliant facilities, in order to abate such violations without the need for the filing of a formal PUC complaint.

D. Construction in rights-of-way.

(1) Street opening permits. Except in the case of an emergency, no utility shall perform any street excavation in the rights-of-way without first obtaining a street opening permit and paying a permit fee in accordance with the provisions of this Chapter. No utility shall perform curb and sidewalk construction replacement or repair without first obtaining a curb and sidewalk permit and paying a fee pursuant to this Chapter. The procurement of a street opening permit shall only be necessary when the proposed street excavation and/or construction impacts Township streets; it shall not apply to any construction or excavation activities on state roads.

(2) Construction standards. Construction standards shall include those determined by the Public Utility Commission for the installation of facilities in Township rights-of-way, as well as such Township construction standards adopted by resolution of the Board of Supervisors of the Township as relate to the opening and closing of Township streets, curbs, and sidewalks, as provided under 15 Pa.C.S.A. § 1511(e). Compliance with construction requirements pursuant to PUC-related standards shall remain within the sole and exclusive jurisdiction of the PUC. Compliance with construction requirements pursuant to Township standards shall remain within the jurisdiction of the Township. The Township shall retain the right to file formal complaints pursuant to PUC-related construction as set forth under Subsection D.

(3) Security. Each utility opening, closing, or excavating Township streets, curbs, and sidewalks as provided under 15 Pa.C.S.A. § 1511(e) in conjunction with the utility's construction or maintenance activities in the ROW shall furnish to the Township, at the utility's expense, a letter of credit or other form of financial

security, in such form and in the amount as required by the Township consistent with the Policies and Procedures and regulations of the Township to guarantee the proper closing and restoration of the Township's streets, sidewalks, or ROW. The security shall be a continuing obligation until the completion of the construction or maintenance as confirmed in writing by the Township. Utilities that are performing ongoing projects or are pursuing multiple projects under one permit shall post security as provided by this Section which shall be held by the Township until final completion of all construction or maintenance activities to guarantee the proper closing and restoration of Township streets, sidewalks or ROW.

- (4) Insurance. The applicant shall maintain insurance, with a reputable insurance company authorized to do business in the Commonwealth of Pennsylvania, 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 requiring the opening or closing of Township streets, sidewalks, or ROW in accordance with 15 Pa.C.S.A. § 1511(e). 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. The utility shall not cancel any required insurance policy without first obtaining alternative insurance in conformance with this section. Utilities undertaking work in the Township rights-of-way shall provide the Township with at least 30 days' advance written notice of any material changes or cancellation of any required insurance policy.
- (5) Recently constructed streets. No street opening permit shall be issued to cut any Township street that was constructed, reconstructed or resurfaced, including all streets offered and accepted for dedication, fewer than three years prior to application for a street opening permit, unless the applicant agrees in writing to overlay or pave the surface of the street, from curb to curb and intersection to intersection, in accordance with applicable Township standards. The Township may grant an exception to this section in the case of an emergency. The applicant shall pay all street degradation fees and comply with all related requirements as prescribed in the policies and procedures promulgated by the Public Works Superintendent and adopted by the Board of Supervisors or as set by resolution from time to time by the Board of Supervisors.
- (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 utility shall temporarily or permanently remove, relocate, change or alter the position of any facilities within the right-of-way, excluding those underground, 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: the construction, repair, maintenance, or installation of any Township or other public improvement in the right-of-way; the operations of the Township or other governmental entity in the right-of-way; vacation of a Street or the release of a utility easement; or an emergency as determined by the Township. Utilities must relocate and remove facilities consistent with the regulations and standards of the PUC.

- (7) Coordination of construction activities. By March 1 of each year, or at such other time as the Township and utilities may agree, each public utility shall provide the Department 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 planned construction activities the utility is planning to perform within the year.
- (8) Damage to facilities or property. A utility, including any contractor working for a utility, shall avoid damage to any facilities and/or public or private property. If any facilities and/or public or private property are damaged by the utility, including by any contractor working for the utility, the utility shall promptly repair and restore such property within 10 business days. The utility shall utilize the Pennsylvania One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.
- (9) Facilities Maps. Each utility issued a street opening permit shall submit to the Township, not later than 30 days after completion of the permitted construction (or any part thereof, if required by the Township), two paper copies and one electronic copy of updated as-built map or maps and engineering specifications as set forth in the Policies and Procedures promulgated by the Public Works Superintendent and adopted by the Board of Supervisors from time to time, depicting and certifying the location of the new facilities constructed or updated. Such documents shall be submitted in a format and include the information required by the Township Policies and Procedures. If the maps are not provided electronically in the required format, then the utility 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.
- (10) Field marking. Each utility shall field-mark the locations of its underground facilities upon request by other utilities or the Township, consistent with the

requirements of the Pennsylvania Underground Utility Line Protection Act and at no cost to the Township.

E. Right-of-way maintenance fee.

- (1) Compensation for right-of-way use. Occupancy of Township rights-of-way by any utility is subject to the Township's right to fix annually a fair and reasonable compensation, which shall be directly related to the Township's actual right-of-way maintenance costs.
- (2) Annual right-of-way maintenance fee. Each utility with facilities in the Township's rights-of-way shall pay an annual fee to compensate the Township for its costs incurred in connection with the ongoing use and occupancy of Township rights-of-way. The annual right-of-way maintenance fee shall be determined by the Township and authorized by resolution of Township Board of Supervisors and shall be based on the Township's actual ROW maintenance costs. The annual right-of-way maintenance fee shall be fixed on a per-linear-foot basis for underground facilities and on a per-linear-foot basis for aerial facilities. If subject to a cable franchise agreement, the utility shall not be required to remit both a cable franchise fee amount and an annual right-of-way maintenance fee to the Township; such utility shall pay the higher of the two fees to the Township. The annual right-of-way maintenance fee shall apply also to abandoned lines not removed from Township rights-of-way.

**§231-17. Non-Public Utility Commission Regulated Entities**

A. Right-of-way use authorization required.

- (1) Right-of-way use authorization. Except as otherwise provided in this Chapter, no non-PUC-regulated entity 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. Public utilities regulated by the PUC shall not be subject to this section and shall comply with the provisions of this Chapter.
- (2) Permit required. Pursuant to this Chapter, all non-PUC-regulated entities that own, construct and/or maintain facilities in any public right-of-way shall obtain a right-of-way use permit. If any such Entity is subject to a cable franchise agreement, the permittee shall not be required to remit both a cable franchise fee

and an annual right-of-way maintenance fee to the Township. Such permittee shall pay the higher amount of the two fees to the Township.

B. Right-of-way use permit.

- (1) Permit required; term and scope of permit. No non-PUC-regulated entity, 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 Chapter and applicable law. A ROW use permit shall be for a term of five years. A ROW use permit and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the Township.
- (2) 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:
  - (a) That it has a history of compliance with applicable laws and regulations relating to the management, construction and maintenance of facilities in streets and rights-of-way, wherever located; and
  - (b) That it possesses all licenses, permits, authorizations, and other permissions required by the Federal Communications Commission, 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.
- (3) 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 "AM" Best rating (or equivalent) and no less than an "A" rating, 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.

- (4) 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.
- (5) 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 by regulation. 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 nondiscriminatory and competitively neutral basis. If the application is denied, the written 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 as fixed from time to time by resolution of Township Board of Supervisors. 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 of Supervisors.
- (6) Renewal of right-of-way use permit.
  - (a) A person desiring to renew a ROW use permit prior to the expiration of the permit shall file an application with the Township for renewal of its authorization, which shall include the information and documents required for an initial application and other material information required by the Township by regulation.
  - (b) The Township shall make a determination accepting or denying the renewal application. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. Determinations to

grant or deny a renewal application shall be made on a nondiscriminatory and competitively neutral basis. The Township shall not unreasonably delay or deny the issuance of a renewal permit.

- (7) 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 in a format and include the information required by the Township by/in the policies and procedures, and 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. After submission of the as-built maps required under this section, each permittee having facilities in the Township rights-of-way shall update such maps as required under this Chapter.
- (8) Right to inspect. The Department 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 Chapter 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.
- (9) 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.

- (10) 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.
- (11) Substantially similar terms. ROW use permits and renewals entered into after the effective date of this Chapter 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.

C. Transitional provisions.

- (1) Persons already authorized to use the right-of-way. Any non-PUC-regulated entity 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: i) the conclusion of the present term of its existing authorization, or ii) 180 days after the date on which this Chapter is amended, 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 Chapter within 90 days after the effective date of the Chapter and shall be subject to the terms and conditions of this Chapter.
- (2) Pending applications. Applications for an authorization to occupy or use the right-of-way that are pending on the date on which this Chapter is amended shall be subject to this Chapter. A person with a pending application shall submit additional information to comply with the requirements of this Chapter and applicable regulations of the Township governing applications within 30 days from the effective date of this Chapter.
- (3) Operating without right-of-way use authorization. Any non-PUC-regulated entity 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 Chapter, shall have 90 days from the date on which this Chapter is amended to file one or more applications for a ROW use authorization. Any entity timely filing such an application shall not be subject to

penalties for failure to hold such a ROW use authorization, provided that 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 Chapter or Township ordinances or regulations, and nothing herein shall prevent the Township from requiring removal of any facilities installed in violation of this Chapter or Township ordinances or regulations.

D. Cable franchise or open video system franchise.

(1) Franchise required.

- (a) No person may own, construct, operate or maintain a cable system or open video system within the Township, provide cable service over a cable system, or provide OVS service over an OVS without a cable franchise or OVS franchise, whichever is applicable, issued by the Township.
- (b) To the extent permitted by law, facilities used to provide telecommunications service, information service or any form of services similar to cable service or OVS service that are also used to provide cable service or OVS service, shall be subject to this Chapter and shall also require a right-of-way-use permit pursuant to this Chapter.

(2) Effect of authorization.

- (a) A cable franchise or an OVS franchise shall not confer any authority to provide any form or type of telecommunications service or information service in addition to the cable service or OVS service authorized by the franchise. To the extent permitted by law, a separate right-of-way use permit pursuant to this Chapter, in addition to the cable franchise or OVS 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) In the event of a conflict between the provisions of this Chapter and a cable franchise agreement or OVS agreement in effect on the effective date of this Chapter, the provisions of the cable franchise agreement or OVS agreement shall govern.

E. Alteration or modification of existing facilities.

- (1) Alteration or modification of existing facilities. The permittee must notify the Township upon alteration or modification of existing facilities within the rights-

of-way. The permittee must additionally provide an updated facilities map if facilities have been removed from or added to the rights-of-way.

- (2) Change in information. If there are any changes in information provided in the original permit application, the permit holder has an obligation to notify the Township within 60 days of such changes.

F. Construction in the rights-of-way.

- (1) Street opening permits. Except in the case of an emergency, no non-PUC-regulated entity 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 231, of the Township of Lancaster Code. No person shall perform curb and sidewalk construction replacement or repair without first obtaining a curb and sidewalk permit and paying a permit fee pursuant to Chapter 231, of the Code. The procurement of a street opening permit shall only be necessary when the proposed street excavation and/or construction affects Township streets; it shall not apply to any construction or excavation activities on state roads.
- (2) Construction standards.
  - (a) All construction, installation, maintenance, and operation of facilities in the ROW by non-PUC-regulated entities shall conform to the requirements of the following publications, as from time to time amended: the Pennsylvania Department of Transportation Publication Form 408, the National Electrical Code, and the National Electrical Safety Code. In the event of conflict between the ROW Construction Standards and this section, this section shall govern as of the effective date of this Chapter.
- (3) Security. Each non-PUC-regulated entity performing construction in the ROW shall furnish to the Township, at the person's expense, a letter of credit or other form of financial security, in such form and in the amount as required by the Township consistent with the Policies and Procedures and regulations of the Township. The security shall be a continuing obligation until the completion of the construction as confirmed in writing by the Township. Non-PUC regulated utilities that are performing ongoing projects or are pursuing multiple projects under one permit shall post security as provided by this Section which shall be held by the Township until final completion of all construction or maintenance activities to guarantee the proper closing and restoration of Township streets, sidewalks or ROW.

- (4) Right to inspect facilities. The Township may inspect the construction or installation of the facilities of any non-PUC-regulated entity, 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 Chapter and other applicable laws and regulations. Entities are required to cooperate with all such inspections and to provide information requested by the Township as part of the inspection.
- (5) Recently constructed streets. No street opening permit shall be issued to cut any Township street that was constructed, reconstructed or resurfaced fewer than three years prior to application for a street opening permit, unless the applicant agrees in writing to overlay or pave the surface of the street, from curb to curb and intersection to intersection, to the satisfaction of the Department.. The applicant shall pay all street degradation fees and comply with all related requirements as prescribed in this Chapter
- (6) Relocation or removal of facilities. Within 6 1200 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 temporarily or permanently remove, relocate, change or alter the position of any facilities within the right-of-way, excluding those underground, whenever the Department, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances: the construction, repair, maintenance, or installation of any Township or other public improvement in the right-of-way; the operations of the Township or other governmental entity in the right-of-way; vacation of a street or the release of a utility easement; or an emergency as determined by the Township.
- (7) Coordination of construction activities. By March 1 of each year, or at such other time as the Township and permittees may agree, each right-of-way use permittee shall provide the Department 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 planned construction activities the permittee is committed to perform within the year.
- (8) Damage to facilities or property. A permittee, including any contractor working for a 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, the 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 shall adhere to all other requirements of the Pennsylvania Underground Utility Line Protection Act.

- (9) Facilities maps. Each non-PUC-regulated entity issued a street opening permit shall submit to the Township, not later than 30 days after completion of the permitted construction (or any part thereof, if required by the Township) 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 the facilities constructed. Such engineering specifications and electronic and paper maps shall be submitted in a format and include the information required by the Township in the Policies and Procedures. 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. Such maps are exempt from public disclosure under Pennsylvania's Right to Know Law, 65 Pa.C.S.A. § 708.
- (10) Field marking. Each permittee shall field-mark the locations of its underground facilities upon request by other permittees, public utilities or the Township, consistent with the requirements of the Pennsylvania Underground Utility Line Protection Act and at no cost to the Township.

G. Right-of-way maintenance fee.

- (1) Compensation for right-of-way use. Occupancy of Township rights-of-way by any utility is subject to the Township's right to fix annually a fair and reasonable compensation, which shall be directly related to the Township's actual right-of-way maintenance costs.
- (2) Annual right-of-way maintenance fee. Each permittee that is not a franchisee, including Township ROW permittees, shall pay an annual fee to the Township to compensate the Township for its costs incurred in connection with the ongoing use and occupancy of the right-of-way. The annual right-of-way maintenance fee shall be determined by the Township and authorized by resolution of Township Board of Supervisors and shall be based on the Township's actual ROW maintenance costs. The annual right-of-way maintenance fee shall be fixed on a per-linear-foot basis for underground facilities and on a per-linear-foot basis for aerial facilities. If subject to a cable franchise agreement, the permittee shall not

be required to remit both a cable franchise fee amount and an annual right-of-way maintenance fee to the Township; such permittee shall pay the higher of the two fees to the Township.

## **§231-18. Remedies, Violations and Penalties**

### **A. Penalties.**

#### **(1) PUC-regulated utilities.**

(a) In the event a public utility is found by the Township to have violated a PUC regulation, standard, or order, then the Township may bring a complaint against such public utility before the Public Utility Commission for violation of such regulation, standard, or order. The Township may also notify the utility of the existence of any suspected violation of PUC standards, regulations or order in order to obtain compliance by the utility.

(b) In the event a public utility is found to have violated any other provision of this Chapter that is not within the exclusive jurisdiction of the PUC, then such public utility shall be subject, upon conviction thereof, to a fine not exceeding \$300, for each and every offense, together with attorneys' fees and costs, and, in default of the payment thereof, imprisonment for not more than 90 days. 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 penalty imposed by this Chapter 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 Chapter which is not subject to the exclusive jurisdiction of the PUC.

(c) Nothing in this section shall be construed to permit the Township to commence or attempt to commence prosecution of any PUC-regulated utility for a violation of any regulation, standard or order of the PUC.

(2) **Non-PUC-regulated entities.** Any entity not regulated by the PUC that is found by the Township to have violated any provision of this Chapter shall be subject, upon conviction thereof, to a fine not exceeding \$300, for each and every offense, together with attorneys' fees and costs, and, in default of the payment thereof, imprisonment for not more than 90 days. 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 penalty imposed by this Chapter 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 Chapter.

- B. Determination of violation. In the event a determination is made that a person has violated any provision of this Chapter or 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 that 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 Chapter and/or Pennsylvania law and regulations.

#### **§231-19. Revocation of Permits**

A. Substantial Breach

The Township reserves the right to revoke any right-of-way use permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by a permittee includes but is not limited to, the following:

- a) The violation of any material provision of the right-of-way permit;
- b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Township or its citizens;
- c) Any material misrepresentation of fact in the application for a right-of-way permit;
- d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued in accordance with the Township's inspection of the work,

B. Written Notice of Breach

If the Township determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule or any condition of the permit, the Township shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for renovation of the permit. The Township, at its discretion, may place additional or revised conditions on the permit in the event of a breach of the terms and conditions of the permit to mitigate and remedy the breach.

- C. **Response to Notice of Breach**  
 Within twenty-four (24) hours of receiving modification of the breach, permittee shall provide the Township with a plan, acceptable to the Township, to cure the breach. Permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the Township , or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.
- D. **Reimbursement of Township Costs**  
 When a permit is revoked by Township, the permittee shall reimburse the Township for the Township's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees, incurred in connection with such revocation.

**§ 231-20. Work Done Without a Permit**

- A. **Emergency Situations**  
 Each permittee shall immediately notify the Public Works Superintendent and for the Township of any event regarding its facilities that it considers to be an emergency. The permittee may proceed to take whatever actions are necessary to respond to the emergency without first obtaining a permit. Excavators' notification to PA One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency the permittee shall apply for the necessary permits, pay the fees associated therewith, and complete the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the Township becomes aware of an emergency regarding a permittee's facilities, the Township will attempt to contact the local representative of each permittee affected, or potentially affected, by the emergency. In any event, the Township may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by permittee whose facilities occasioned the emergency.

- B. **Non-Emergency Situations**  
 Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay twice the fee for said permit, pay twice all the other fees required by the Township, deposit with the Township the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Chapter.

**§231-21. General Provisions**

- A. **Proprietary Information.** If a person considers information it is obligated to provide to the Township under this Chapter to be a business or trade secret or otherwise proprietary or

confidential in nature and desires to protect the information from disclosure, then the person 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 person in the following circumstances: i) 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 ii) if the Township Solicitor determines that the information should be disclosed in relation to its enforcement of this Chapter or the exercise of its police or regulatory powers. In the event the person 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 person.

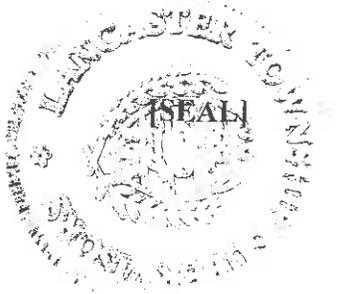
The Township may, but is not required, to waive or grant an exception to any of the provisions of this Chapter in the event of emergency or for other cause shown by Applicant which would support such a waiver or exception.

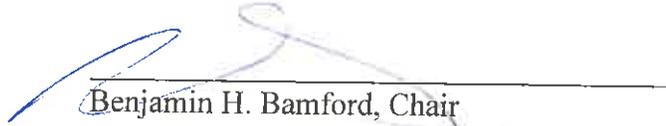
- B. Leased facilities. Subject to the provisions of this Chapter and with prior written approval of the Township, a non-PUC-regulated entity shall have the right to furnish any facilities for which it has the applicable authorization to own, construct, operate and/or maintain in the right-of-way to another person for the latter's use in constructing or operating its own facilities in the right-of-way, provided that:
  - (A) The entity furnishing its facilities to another shall first deliver to the Township notice 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; and
  - (B) The person to which the facilities are furnished shall comply with all of the requirements of this Chapter and other applicable policies and procedures.
- C. 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 Chapter; 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 Chapter.

- D. 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 that relate directly to the terms and conditions of this Chapter.
- E. 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.
- F. 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 Chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Chapter on any other occasion, nor shall the failure to enforce any prior ordinance or Township Code 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 Chapter or any other provision of applicable law.
- G. Policies and Procedures. The Township is authorized to prepare such written policies and procedures consistent with this Chapter as the Township deems necessary for the implementation of this Chapter. Such policies and procedures shall be prepared and promulgated by the Public Works Superintendent and adopted by the Township.
- H. Lancaster Township, its employees, authorized agents and representatives, shall be exempt from the provisions of this Ordinance and the Policies and Procedures adopted and promulgated hereunder.
- I. Police powers. The Township, by granting any permit or taking any other action pursuant to this Chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable federal, state and local laws and regulations.
- J. Severability. If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.
- K. Effective Date: This Ordinance shall take effect five (5) days after enactment by the Board of Supervisors of the Township of Lancaster as provided by law.

DULY ORDAINED, this thirteenth (13<sup>th</sup>) day of July, 2015, by the Board of Supervisors of the Township of Lancaster, Lancaster County, Pennsylvania.

**BOARD OF SUPERVISORS  
TOWNSHIP OF LANCASTER**



  
\_\_\_\_\_  
Benjamin H. Bamford, Chair

  
\_\_\_\_\_  
Thomas H. Schaller, Vice Chair

  
\_\_\_\_\_  
ATTEST: William M. Laudien,  
Township Manager/Secretary

  
\_\_\_\_\_  
Kathleen M. Wasong, Treasurer