

**HOME RULE BOROUGH OF EDINBORO ORDINANCE
NO. 623**

AN ORDINANCE AMENDING ORDINANCE 457 OF THE BOROUGH OF EDINBORO, ADOPTED ON OR ABOUT JANUARY 31, 1994, ENTITLED THE ZONING ORDINANCE OF THE BOROUGH OF EDINBORO, AS AMENDED, AMENDING SECTION 202, ENTITLED DEFINITIONS, THROUGH THE ADDITION OF DEFINITIONS RELATED TO FENCES, THE SMALL WIRELESS FACILITIES DEPLOYMENT ACT AND MISCELLANEOUS DEFINITIONS; AMENDING SECTION 403 TO FURTHER REGULATE FENCES AND STOOPS; PROVIDING FOR A NEW SECTION 418, PERMITTING SMALL WIRELESS FACILITIES TO PERMIT THE USE OF THE BOROUGH'S RIGHT-OF-WAY FOR SMALL WIRELESS FACILITIES, TO ESTABLISH A PERMITTING PROCESS FOR THE USE OF THE BOROUGH'S RIGHT-OF-WAY, TO ESTABLISH RATES RELATED TO SMALL WIRELESS FACILITIES PERMITS AND RIGHTS-OF-WAY, AND TO ESTABLISH REQUIREMENTS FOR UTILIZING THE BOROUGH'S RIGHT-OF-WAY; PROVIDING FOR SEVERABILITY, A REPEALER, DIRECTIONS TO THE BOROUGH MANAGER AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Edinboro Borough Ordinance No. 585, adopted on or about September 12, 2011, the Borough of Edinboro codified its Ordinances, including Ordinance No. 457, adopted on or about January 31, 1994, and amended from time to time, known as the Zoning Ordinance of the Borough of Edinboro (the "Zoning Ordinance"); and

WHEREAS, the Borough has the power and duty to enact ordinances that promote the health, safety, and general welfare of the residents and visitors, including zoning ordinances; and

WHEREAS, the Edinboro Borough Council has reviewed Act 50 of 2021, entitled the Small Wireless Facilities Deployment Act, which took effect on August 30, 2021 (the "Act"); and

WHEREAS, the Act, at 53 P.S. § 11704.7, requires Pennsylvania municipalities, such as the Borough, to amend existing Ordinances to reflect the provisions of the Act; and

WHEREAS, the Edinboro Borough Council has identified certain other amendments to the Zoning Ordinance which the Council believes should be adopted as they are in the best interests of the citizens, residents and taxpayers of the Borough.

NOW THEREFORE, the Edinboro Borough Council hereby ordains and enacts the following:

Section 1. Section 202 of the Zoning Ordinance, entitled Specific Terms, is hereby amended by inserting a new definitions in the proper alphabetical order as follows:

ADJACENT

Not distant; having a common endpoint or border; immediately preceding or following.

ANTENNA

Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.

CABLE FACILITY

Buildings, other structures, and equipment used by the owner or operator of a cable television system to provide services.

CABLE SYSTEM

As used in this Zoning Ordinance, the term “cable system” shall have the meaning given to it in Section 602(6) of the Cable Communications Policy Act of 1984, 47 U.S.C. § 522(7), as may be amended from time-to-time.

COMMUNICATIONS FACILITY

A set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide a communications service.

COMMUNICATIONS SERVICE PROVIDER

Any of the following:

- 1) A cable operator as defined in Section 602(4) of the Cable Communications Policy Act of 1984, 47 U.S.C. § 522(5) as may be amended from time-to-time.
- 2) A provider of information service as defined in Section 3(20) of the Communications Act of 1934, 47 U.S.C. § 153(24), as may be amended from time-to-time.
- 3) A telecommunications carrier as defined in Section 3(44) of the Communications Act of 1934, 47 U.S.C. § 153(5).

- 4) A wireless provider.

DECORATIVE POLE

A municipal pole that is specifically designed and placed for aesthetic purposes.

FENCE

An affixed barrier enclosing or bordering a field, yard, etc., usually made of vertical posts connected with horizontal sections of sturdy material or materials, as wood, metal, vinyl, or wire, used to prevent entrance, to confine or to mark a boundary.

FENCE, TEMPORARY

A barrier designed to be erected on the windward side of a road, house, barn, etc., for the purpose of serving as a protection from drifting snow.

IMPERVIOUS SURFACE

A surface that generally prevents the infiltration of water into the ground.

LOT COVERAGE

The portion or percentage of the lot area covered by the impervious surface.

MICRO-WIRELESS FACILITY

A small wireless facility that (1) does not exceed two (2) cubic feet in volume; and (2) has an exterior antenna no longer than eleven (11) inches.

MUNICIPAL POLE

A utility pole, owned, managed, or operated by or on behalf of the Borough.

MODIFY

As used within Part 4 of Chapter 27 of this Ordinance, pertaining to small wireless facilities, the improvement, upgrade, or replacement of a small wireless facility or an existing utility pole that does not substantially change the physical dimension of the small wireless facility or utility pole.

RIGHT-OF-WAY

The area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property. The term does not include a Federal interstate highway.

SETBACK

The distance a house or structure must be from the property line.

SMALL WIRELESS FACILITY

The equipment and network components, including antennas, transmitters, and receiver, used by a wireless provider that meets the following qualifications:

- 1) Each antenna associated with the deployment is no more than three (3) cubic feet in volume.
- 2) The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty-eight (28) cubic feet.
- 3) Any equipment used solely for the concealment of the small wireless facility shall not be included in the calculation of equipment volume under this paragraph.

STOOP

A porch, platform, entrance stairway, or small veranda at a house door

WIRELESS PROVIDER

- 1) A person authorized by the Pennsylvania Public Utility Commission to provide telecommunications services in the Commonwealth of Pennsylvania that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures.
- 2) A person who provides wireless services.

Section 2. That Section 403, entitled Application of Yard Regulations, be amended through the inclusion of the underlined language and the deletion of the struck out language as follows:

§403. Application of Yard Regulations

2. All structures, whether attached to the principal structure or not, and whether open or enclosed, including porches, carports, balconies or platforms above normal grade level, shall not project into any minimum front, side or rear yards except as noted in this subsection, subsection .3 and subsection .4. Overhangs of up to 18 inches will be allowed (see illustration), except as provided below for stoops. Steps and stoops to exterior doors will be permitted (see Illustration). A stoop to an exterior door may not exceed a measurement of 4 feet deep and 6 feet wide. A permitted stoop may be covered, but not enclosed. A permitted stoop may have up to 2 support columns to support any covering. The covering of a permitted stoop may have up to a 3 inch overhang beyond the stoop dimensions. A chimney may project not more than 2 feet into a required yard. Bay windows and balconies may project not more than 2 feet into a required yard.

3. A wall or fence under 6 feet 6 inches in height and paved terraces without walls, roofs or other enclosures may be erected within the limits of any yard. Retaining walls and fences required for screening under this Chapter are not subject to the 6-foot ~~high~~ height limitation. Fences may be permitted in front yard areas provided they are not higher than 3 4 feet and do not obstruct the required free sight triangle at intersections. The 4 foot height limitation for fences in front yard areas does not apply to decorative gates, which shall not be higher than 7 feet and do not obstruct the required free sight triangle at intersections. (See the Borough's subdivision regulations relative to intersection sight distance [Chapter 22]). Fences shall be constructed in accordance with Borough codes. Fences shall not be electrified, use spikes, broken glass, barbed wire or similar material designed to injury persons who attempt to climb them. Temporary fences shall not be used to enclose a yard or portion thereof, and shall only be permitted to be erected from November 1 through April 1 of any year. Fences may be installed on a property line, except in front yard areas, or side yard areas adjacent to a roadway, where fences can be installed up to the edge of the right-of-way.

Section 3. That a new Section 418, entitled Small Wireless Facilities, be added as follows:

§27-418 Small Wireless Facilities

1. The installation of small wireless facilities shall be a permitted use in all Zoning Districts of the Borough.
2. The Borough shall permit wireless providers, with the permission of owners of the structure and subsequent to the issuance of a proper Zoning Permit, to:
 - A. Collocate small wireless facilities within its right-of-way.
 - B. Replace an existing utility pole to install small wireless facilities within its right-of-way.

- C. Install a new utility pole with attached small wireless facilities within its right-of-way.
- 3. The Borough shall not enter into an exclusive arrangement with any person for use of the right-of-way for: (1) collocation; or (2) the installation, operation, modification or replacement of utility poles with small wireless facilities attached.
- 4. A wireless provider who wishes to install a small wireless facility shall apply to the Borough's Zoning Officer for a Zoning Permit. The Borough will develop and distribute a Small Wireless Facility Application for Zoning Permits. General permit applications shall not be permitted for small wireless facilities installation.
- 5. Zoning Permits shall not be required for the following actions:
 - A. Routine repair or maintenance work on existing small wireless facilities.
 - B. The replacement of existing small wireless facilities with substantially similar or smaller small wireless facilities.
 - C. The installation of micro-wireless facilities that are placed on cables between existing utility poles.
- 6. The Borough Council shall establish a Small Wireless Facility Application fee by duly-adopted Resolution of the Borough Council. Subject to fee adjustments pursuant to 53 P.S. § 11704.7(c), as may be amended, the Small Wireless Facility Application fee shall not exceed Five Hundred Dollars (\$500) for an applicant seeking approval for no more than five (5) small wireless facilities. The fee may be increased by up to One Hundred Dollars (\$100) for each additional small wireless facility. For a small wireless facility that requires the installation of a new or replacement utility pole, the application fee shall not exceed One Thousand Dollars (\$1,000).
- 7. The Borough is obligated to inform a small wireless facilities applicant if their Small Wireless Facility Application is incomplete within ten (10) business days of receipt of a Small Wireless Facility Application. The notice must specifically identify the missing information provided on the initial Small Wireless Facility Application. In the event that applicant corrects the errors in the Small Wireless Facility Application, the time period for rendering a decision on the Small Wireless Facility Application will reset.
- 8. An applicant seeking to collocate multiple small wireless facilities within the Borough may be permitted to file a consolidated Small Wireless

Facility Application for collocation of multiple small wireless facilities in accordance with the following:

- A. The consolidated Small Wireless Facility Application shall not exceed twenty (20) small wireless facilities.
 - B. The denial of one or more small wireless facilities in a consolidated Small Wireless Facility Application shall not delay processing of any other small wireless facilities in the same consolidated Zoning Permit Application.
 - C. A single applicant may not submit more than one consolidated or twenty (20) individual Small Wireless Facility Applications within a thirty (30) day period.
9. The Borough shall make a decision on the Small Wireless Facility Application within:
- A. Sixty (60) days for an application to collocate a small wireless facility on an existing utility pole.
 - B. Ninety (90) days for an application to replace a utility pole or install a new utility pole for small wireless facilities installation.
 - C. In the event that the Borough receives more than one (1) consolidated Small Wireless Facility Application or more than twenty (20) Small Wireless Facility Applications for small wireless facilities within a single forty-five day period, the time periods above shall be extended to seventy-five (75) days and one hundred and five (105) days.
10. The Borough shall be permitted to deny a Small Wireless Facility Application or a consolidated Small Wireless Facility Application for small wireless facilities only if the any of the following apply:
- A. The small wireless facility materially interferes with the safe operation of traffic control equipment, sight lines, or clear zones for transportation or pedestrians, fails to comply with the Americans with Disabilities Act of 1990, as amended, or fails to comply with similar federal or Pennsylvania standards regarding pedestrian access or movement.
 - B. The small wireless facility fails to comply with the requirements of this Ordinance and other applicable codes.
 - C. The small wireless facility fails to comply with the requirements under the Small Wireless Facilities Deployment Act, as amended.

- D. The applicant fails to submit a report by a qualified engineering expert which shows that the small wireless facility will comply with applicable FCC regulations.
11. In the event that the Borough denies a Small Wireless Facility Application, the Borough must provide the applicant a notice of denial, including the basis for the denial, within five (5) days of the decision.
 12. In the event that the Borough denies a Small Wireless Facility Application, the applicant may attempt to cure the deficiency and re-submit the Small Wireless Facility Application within thirty (30) days of the date of denial. Upon receiving the re-submitted application, the Borough shall be given thirty (30) additional days to either accept the re-submitted Small Wireless Facility Application or deny the same.
 13. Zoning Permits for the installation of small wireless facilities shall be valid for a one (1) year period, subject to extension or renewal at the Borough's sole discretion.
 14. When applying to install a new utility pole under this act, the Borough may require the wireless provider to demonstrate that it cannot meet the service reliability and functional objectives of the application by collocating on an existing utility pole or municipal pole instead of installing a new utility pole. The Borough may require the wireless provider to self-certify that the wireless provider has made this determination in good faith and to provide a documented summary of the basis for the determination. The wireless provider's determination shall be based on whether the wireless provider can meet the service objectives of the application by collocating on an existing utility pole or municipal pole on which: (1) The wireless provider has the right to collocation; (2) The collocation is technically feasible and would not impose substantial additional cost; (3) The collocation would not obstruct or hinder travel or have a negative impact on public safety.
 15. Approval of an application authorizes the applicant to:
 - A. Collocate on an existing utility pole, modify or replace a utility pole or install a new utility pole with small wireless facilities attached as identified in the initial application.
 - B. Subject to the permit requirements and the applicant's right to terminate at any time, operate and maintain small wireless facilities and any associated equipment on a utility pole covered by the permit for a period of not less than five years, which shall be renewed for two additional five-year periods if the applicant is in compliance with the criteria set forth in this act or applicable codes consistent with this act and the applicant has obtained all necessary consent from the utility pole owner.

16. All small wireless facilities will be installed so as not to hinder travel, hinder public safety, or obstruct the legal use of the right-of-way by the Borough and/or other authorized users.
17. The Borough shall allow collocation on municipal poles using the process required under this act and applicable codes unless the small wireless facility would cause structural or safety deficiencies to the municipal pole, in which case the Borough and applicant shall work together for any make-ready work or modifications or replacements that are needed to accommodate the small wireless facility. All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way.
18. Each new small wireless facility installed in the Borough's right-of-way shall be installed on an existing utility pole or a new utility pole shall be subject to the following:
 - A. The installation of a small wireless facility on an existing utility pole shall not extend more than five (5) feet above the existing utility pole.
 - B. If collocation on an existing utility pole cannot be achieved, a small wireless facility may be installed on a new or replacement utility pole. The maximum permitted height of the utility pole and installed small wireless facility shall not be taller than Fifty Feet (50 ft) above ground level.
 - C. A wireless provider may request a height limit waiver or variance in its permit application, with said request requiring the approval of the Zoning Hearing Board.
19. Pursuant to 53 P.S. § 11704.3(h), the Borough Council may, by resolution, create design guidelines to minimize the aesthetic impact of small wireless facilities so long as the design guidelines are technically feasible, do not have the effect of prohibiting the wireless provider's technology, and do not unreasonably discriminate among wireless providers of functionally equivalent services.
20. The Borough of Edinboro shall establish fees, by Resolution of the Borough Council, for the use of its rights-of-way for the installation of small wireless facilities. Said fee shall not exceed Two Hundred and Seventy Dollars (\$270) unless the Borough establishes the following:
 - A. The Borough's fee is a reasonable approximation of the costs to manage the right-of-way.
 - B. The Borough's fee set by Resolution is reasonable.

C. The Borough's fee is not discriminatory.

21. Right of access to rights-of-way.

A. Under the provisions of this act, in accordance with applicable codes, and with the permission of the owner of the structure, a wireless provider shall have the right to perform the following within the right-of-way: (i) Collocate; and (ii) Replace an existing utility pole or install a new utility pole with attached small wireless facilities.

B. All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way or obstruct the legal use of the right-of-way by the Borough and utilities.

22. General Requirements for Uses of Rights-of-Way. Wireless providers shall use the rights-of-way in accordance with the requirements of 53 P.S. § 11704.4(9), including, but not limited to, the 2017 National Electrical Safety Code and the Workers' Compensation Act.

23. A wireless provider shall repair any and all damage to the right-of-way or any other land that is disturbed or damaged directly by the activities of the wireless provider and/or their contractors during the installation of small wireless facilities.

24. The approval of the installation, placement, maintenance or operation of a small wireless facility under this section shall not authorize the provision of any communications services without compliance with all applicable laws or the installation, placement, maintenance or operation of any communications facilities other than wireless facilities and associated utility poles in the right-of-way.

25. The Borough may reserve space on an existing municipal pole for future public safety or transportation uses in a documented and approved plan as adopted at the time an application is filed. A reservation of space shall not preclude collocation, the replacement of an existing utility pole or the installation of a new utility pole. If the replacement of a municipal pole is necessary to accommodate collocation and the reserved future use, the wireless provider shall pay for the replacement municipal pole and the municipal pole shall accommodate the future use.

26. The Borough shall allow collocation on municipal poles using the process required under this Ordinance unless the small wireless facility would cause structural and safety deficiencies to the municipal pole. In the case that structural or safety deficiencies are present on a municipal pole, the Borough and the applicant will work together to provide make-ready work

or modifications or replacements that are needed to accommodate the small wireless facility.

27. In the event that the Borough and applicant are required to provide make-ready work, modifications, or replacement of municipal poles in accordance with Section 27-418(19), the Borough shall provide a good faith estimate for any make-ready work necessary to support the collocation and the fees will be paid for solely by the applicant. The make-ready work on the municipal pole shall be completed within sixty (60) days of the acceptance of the good-faith estimate by the applicant.
28. In the event a wireless provider fails to repair any damages caused by the wireless provider during small wireless facilities installation after thirty (30) days' written notification by the Borough, the Borough may repair the damages and charge the wireless provider the reasonable documented cost of repairs and a penalty not to exceed Five Hundred Dollars (\$500.00).
29. Failure to pay the repair costs and penalty outlined above in Section 27-418(21) may result in the Borough suspending the offending wireless provider from receiving further Zoning Permits for small wireless facilities' installation.
30. In the event that a wireless provider is not in compliance with any of the provisions of the Small Wireless Facilities Act or this Section, the Borough shall provide a Notice of Non-Compliance and give the wireless provider thirty (30) days to cure all noncompliance.
 - A. If a wireless provider fails to comply or fails to bring its facilities into compliance after thirty (30) days, the Zoning Officer may revoke the Zoning Permit and the wireless provider has sixty (60) days to remove their facilities from the Borough after the date of revocation.
 - B. In the event that a wireless provider allows a Zoning Permit to expire, without extension or non-renewal, the wireless provider shall be accorded ninety (90) days to remove their facilities from the Borough from the date of the Zoning Permit's expiration.
31. In the event that the Borough's Zoning Officer revokes a Zoning Permit for a small wireless facility, the wireless provider shall remove the small wireless facility and any associated equipment, including but not limited to, the utility pole and any support structures
32. Wireless providers shall fully indemnify and hold the Borough, its officers, employees, and agents harmless against any claims, lawsuits, judgments, costs, liens, expenses, fees, or any other damages caused by the wireless provider while installing, repairing, or maintaining small wireless facilities or utility poles within the Borough's right-of-way.

33. The Borough may not institute a moratorium on filing, receiving, processing applications, or issuing permits for the collocaiton or installation of small wireless facilities within the Borough.
34. In the event of a conflict between this Zoning Ordinance and the Small Wireless Facilities Deployment Act, at 53 P.S. §11704.1 et seq., as amended, the provisions of the Small Wireless Facilities Deployment Act will apply.

Section 4. Repealer

Any ordinances, rules or resolutions, or parts of ordinances, rules, or resolutions, in conflict herewith shall be, and the same are hereby repealed.

Section 5. Severability

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

Section 6. Directions to Borough Manager

The Borough Manager is hereby directed to affix the Borough Seal upon this Ordinance, insert the date of enactment upon the same, record the ordinance in the Borough Ordinance Book and take all such actions as are required by the Home Rule Charter of the Borough and to amend the Borough Code as may be necessary.

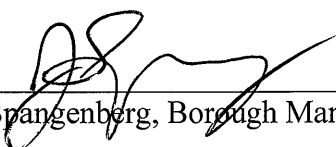
Section 7. Effective Date.

This Ordinance shall be effective on the tenth (10th) day following the enactment of this Ordinance, as indicated below.


ORDAINED AND ENACTED by the BOROUGH COUNCIL OF THE HOME RULE BOROUGH OF EDINBORO on the date first indicated above.

ATTEST:

BOROUGH OF EDINBORO




Jason Spangenberg, Borough Manager



Aaron Gast, Mayor

CERTIFICATION

I hereby certify that the above is a true copy of the Borough of Edinboro Ordinance No. 623 adopted by a roll call vote signifying the majority vote of the members present of the Borough Council of the Borough of Edinboro on May 9, 2022, the same being advertised in the Meadville Tribune and recorded in the Borough Ordinance Book.


Secretary Jason Spangenberg

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