

ORDINANCE NO. 2022-01

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF ABBOTTSTOWN BOROUGH, ORDINANCE NO. 2015-001, AS AMENDED, AND AS CODIFIED IN THE CODE OF THE BOROUGH OF ABBOTTSTOWN, ADAMS COUNTY, PENNSYLVANIA, IN CHAPTER 204 THEREOF, TO COMPLY WITH PENNSYLVANIA'S SMALL WIRELESS FACILITIES DEPLOYMENT ACT, ACT 50 OF 2021, BY ADDING SMALL WIRELESS FACILITY USE AS A PERMITTED USE IN A RIGHT-OF-WAY IN ALL ZONING DISTRICTS, AND PROVIDING FOR RELATED DEFINITIONS, APPLICATION PROCEDURES, AND STANDARDS AND REQUIREMENTS

WHEREAS the Borough of Abbottstown desires to amend the Zoning Ordinance of The Borough of Abbottstown, Ordinance No. 2015-001, as amended, to comply with Pennsylvania's Small Wireless Facilities Deployment Act, Act 50 of 2021.

NOW THEREFORE BE IT ENACTED AND ORDAINED by the Borough Council of Abbottstown:

SECTION 1. PURPOSE

The purpose of this Ordinance is to amend the Zoning Ordinance of The Borough of Abbottstown, Ordinance No. 2015-001, as amended, to comply with Pennsylvania's Small Wireless Facilities Deployment Act, Act 50 of 2021.

SECTION 2. ENABLING AUTHORITY

This Ordinance is enacted pursuant to the enabling authority of the Pennsylvania Municipalities Planning Code, Article VI, 53 P.S. § 10609.

SECTION 3. AMENDMENTS TO ZONING ORDINANCE

A. Section 204-5 is amended to provide for and add the following Definitions which are intended to be consistent with the definitions stated in Pennsylvania's Small Wireless Facilities Deployment Act and shall have the following meanings when used in this Section. Other definitions stated in the Small Wireless Facilities Deployment Act shall be incorporated herein by reference.

"Antenna." Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.
"Applicable codes." Any of the following:

(1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances that comply with this act.

"Applicant." A communications service provider that submits an application.

"Application." A request submitted by an applicant to a municipality:

(1) for a permit to collocate small wireless facilities; or

(2) to approve the installation, modification or replacement of a utility pole with small wireless facilities attached.

"Cable facility." Buildings, other structures and equipment used by the owner or operator of a cable television system to provide service. As used in this definition, the term "cable system" shall have the meaning given to it in section 602(6) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 522(7)).

"Collocation" or "collocate." To install, mount, maintain, modify or replace small wireless facilities on an existing utility pole or other wireless support structure.

"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 (Public Law 98-549, 47 U.S.C. § 522(5)).

(2) A provider of information service as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(24)).

(3) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(51)).

(4) A wireless provider.

"Decorative pole." A municipal pole that is specially designed and placed for aesthetic purposes.

"FCC." The Federal Communications Commission.

"Historic district or building." A building that is or a group of buildings, properties or sites that are:

(1) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register.

(2) Determined to be eligible for listing by the Keeper of the National Register of Historic Places who has been delegated the authority by a Federal agency to list properties and determine their eligibility for the National Register of Historic Places in accordance with section VI.D.1.a.i-v of the Nationwide Programmatic Agreement for Review Regarding the Section 106 National Historic Preservation Act Review Process as specified under 47 CFR Pt. 1, App. C (relating to Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process).

(3) Marked as a historical site by the Pennsylvania Historical and Museum Commission pursuant to 37 Pa.C.S. (relating to historical and museums).

(4) Within a historic district created pursuant to the act of June 13, 1961 (P.L.282, No.167), entitled "An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts."

"Micro wireless facility." A small wireless facility that:

(1) does not exceed two cubic feet in volume; and

(2) has an exterior antenna no longer than 11 inches.

"Modification" or "modify." The improvement, upgrade or replacement of a small wireless facility or an existing utility pole that does not substantially change, as defined in 47 CFR 1.6100(b)(7) (relating to wireless facility modifications), the physical dimension of the small wireless facility or utility pole.

"Municipal pole." A utility pole owned, managed, or operated by or on behalf of a municipality.

"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.

"Small wireless facility." The equipment and network components, including antennas, transmitters, and receivers, used by a wireless provider that meet the following qualifications:

- (1) Each antenna associated with the deployment is no more than three 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 28 cubic feet. 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.

"Technically feasible." By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a material reduction in the functionality of the small wireless facility.

"Utility facility." Buildings, other structures and equipment owned or operated by a public utility, as defined in 66 Pa.C.S. § 102 (relating to definitions), to provide service.

"Utility pole." A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.

"Wireless facility." As follows:

- (1) Equipment at a fixed location that enables wireless service between user equipment and a communications network, including any of the following:
 - (i) Equipment associated with wireless services.
 - (ii) Radio transceivers, antennas, coaxial or fiber optic cables, regular and backup power supplies or comparable equipment, regardless of technological configuration.
- (2) The term includes a small wireless facility.
- (3) The term does not include any of the following:
 - (i) The structure or improvements on, under or within which the equipment is collocated.
 - (ii) The coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.

"Wireless infrastructure provider." A person authorized by the Pennsylvania Public Utility Commission to provide telecommunications service in this Commonwealth that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures but is not a wireless services provider.

"Wireless provider." A wireless infrastructure provider or a wireless services provider.

"Wireless services." Services, whether at a fixed location or mobile, using a licensed or unlicensed spectrum, provided to the public using wireless facilities.

"Wireless services provider." A person who provides wireless services.

"Wireless support structure." The term shall have the same meaning given to it in the act of October 24, 2012 (P.L.1501, No.191), known as the Wireless Broadband Collocation Act.

B. "Small Wireless Facility Use (within a right-of-way)" is added as a Use Permitted By-Right in all zoning districts. The following Sections are hereby amended to add "Small Wireless Facility Use (within a right-of-way)" as a Use Permitted By-Right:

- a. Low Density Residential (LDR) District 204-11 Section A. (19) Small Wireless Facility Use (within a right-of-way) per section 204-31 N.
- b. Moderate Density Residential (MDR) District 204-15 Section A. (19) Small Wireless Facility Use (within a right-of-way) per section 204-31 N.
- c. Town Center Residential (TCR) District 204-19 Section A. (16) Small Wireless Facility Use (within a right-of-way) per section 204-31 N.
- d. Town Center Mixed Use (TCMU) District 204-23 Section A. (32) Small Wireless Facility Use (within a right-of-way) per section 204-31 N.
- e. Commercial/Industrial (CI) District 204-27 Section A. (25) Small Wireless Facility Use (within a right-of-way) per section 204-31 N.

C. Section 204-31. N. the Small Wireless Facility Use (in a right-of-way) is added to the General Use Regulations, as follows:

(1) Intent. It is the express intent of the Borough to conform its Zoning Ordinance to Pennsylvania's Small Wireless Facilities Deployment Act (Act 50 of 2021).

(2) Applicability.

(a) The provisions of this Section shall apply only to activities of a wireless provider within a right-of-way for the deployment of small wireless facilities and associated new utility poles with small wireless facilities attached.

(b) In accordance with the Small Wireless Facilities Deployment Act, this Section, and other applicable codes including, but not limited to, the Borough's Stormwater Management Ordinance and Chapter 84 Streets and Sidewalks (highway occupancy/encroachment permit) and Pennsylvania's Uniform Construction Code (adopting the International Building Code and the National Electric Code), and with the permission of the owner of the structure, a small wireless facility provider shall have the right to perform the following within the right-of-way:

(1) Collocate. Collocation is required unless the applicant demonstrates that it cannot meet service reliability and functional objectives by collocation. Collocation requires that the wireless provider has a right to collocate on an existing utility pole; the collocation is technically feasible and would not impose substantial additional cost; and collocation would not obstruct or hinder travel or have a negative impact on public safety.

(2) Replacement; New Utility Pole. Replace an existing utility pole or install a new utility pole with attached small wireless facilities.

(3) Design Guidelines.

(a) All small wireless facilities shall be designed, constructed, inspected, operated, maintained, repaired, modified and removed in strict compliance with all current applicable federal and state technical, building and safety codes and the requirements of this Section.

(b) All structures and facilities shall be installed and maintained so as not to obstruct, endanger or hinder travel or public safety on and within the right-of-way; damage or interfere with other utility facilities located within a right-of-way; interfere with another utility's use of the utility's facilities located or to be located within the right-of-way; or obstruct the legal use of the right-of-way by the Borough and utilities.

(1) Construction, maintenance, repair, replacement and/or removal of small wireless facilities activities which disturb the use of and improvements within the Borough's Road rights-of-way shall comply with the Borough's Chapter 84 Streets and Sidewalks (highway occupancy/encroachment permit). In its administration of that Ordinance, the Borough reserves the right to determine the time, place and manner of work by the wireless provider, its contractor and subcontractor(s) based on public safety; traffic management; physical burden on the right-of-way and legal use of the right-of-way; and impact on improvements in the right-of-way, including but not limited to cartway, shoulders, and stormwater management facilities.

(c) Size limits.

(1) Each new or modified small wireless facility shall meet the size requirements set forth in the definitions of micro wireless facility or small wireless facility, whichever is applicable.

(2) Each new or modified small wireless facility installed in the right-of-way shall be installed on an existing utility pole or a new utility pole subject to the following:

(i) The installation of a small wireless facility on an existing utility pole shall not extend more than five feet above the existing utility pole.

(ii) 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 facility, which shall include the utility pole and small wireless facility shall not be taller than 50 feet above ground level.

(d) Least intrusive design; stealth design.

(1) Small wireless facilities shall consist of the smallest and least visibly intrusive equipment feasible.

(2) The small wireless facility shall employ the most current stealth technology available; at a minimum, facilities shall be painted to match the utility pole upon which a facility is collocated or, where not involving collocation, new utility poles and facilities shall be painted gray.

(e) Lighting. Small wireless facilities shall not be artificially lighted beyond what is required by state and federal regulations.

(4) Zoning Permit Required.

(a) Zoning Permit. Except as otherwise provided by Subsection 6., a zoning permit is required for any use regulated by this Section.

(5) Zoning Permit Not Required.

(a) A zoning permit is not required for:

(1) Routine maintenance or repair work.

(2) The replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller.

(3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles by or

for a communications service provider authorized to occupy the right-of-way, in compliance with the National Electrical Safety Code.

(6) Submission for Determination That a Zoning Permit is Not Required.

(a) The wireless provider shall submit the following information for a determination by the Zoning Officer of the need for the filing of an application for a zoning permit:

(1) Plan depicting the type, location, and dimensions of the proposed small wireless facility.

(2) A written self-certification, signed by the applicant or a person authorized to make such certification on behalf of the applicant with supporting information demonstrating that the proposed small wireless facility conforms to the requirements of this section and bearing the following statement above the signature:

The statements made in this writing are true and correct to the best of the knowledge, information and belief of the undersigned signatory, and made with the understanding that any false statement is subject to the penalties of 18Pa.C.S.A. Section 4804, relating to "Unsworn Falsification to Authorities.

(b) A complete pre-application submission for determination that no zoning permit is required shall be acted upon within 10 business days of the receipt of the submission by issuance of a written determination. In the event a zoning permit is determined to be required, the permit requirement and application procedures set forth in the remaining subsections of this Section shall apply.

(7) Zoning Permit Application Requirements and Procedures.

(a) Pre-Application Meeting. It is recommended, but not required, that the applicant discuss the application with the Zoning Officer prior to its submission to familiarize the applicant with this Section and to familiarize the Borough with the applicant's proposed use.

(b) Application for Zoning Permit. An application for a zoning permit for a small wireless facility use shall include the following:

(1) Application Form. Application for the zoning permit shall be made on the form prescribed by the Borough and shall contain all information generally required for such application as set forth on the form, as well as the additional information required below.

(i) If the applicant is not the intended operator of the proposed use, the name, address, telephone number and email address of the operator.

(ii) If the applicant is not the intended contractor of the proposed use, the name, address, telephone number and email address of the contractor. The same information is required for all subcontractors.

(2) Narrative. Narrative description of the proposed small wireless facility and related support and equipment, including a description of dimensions, materials, color, and lighting.

(3) Site Plan. Scaled plan, prepared by a Commonwealth-registered professional engineer or surveyor, depicting the location and dimensions of the proposed small wireless facility, lot lines, names of adjacent lot owners, leasehold lines (if applicable) and easements (if applicable).

(4) Collocation.

(i) Any application for a new tower-based small wireless facility shall demonstrate that collocation is not technically and economically feasible.

(ii) Applicant erecting a new utility pole shall provide the municipality with a written commitment, binding on the applicant's successors, that it will allow other service providers to collocate on the utility pole, where technically and economically feasible.

(iii) In the event of collocation on an existing utility pole, written agreement of the utility pole owner for the collocation of small wireless facilities.

(iv) A written self-certification, signed by the applicant or a person authorized to make such certification on behalf of the applicant, stating that collocation cannot meet service reliability and functional objectives. The self-certification shall be accompanied by a written summary of the basis for the determination.

(5) Facility Drawings. Scaled construction and engineering drawings, prepared by a professional engineer, describing the type and dimensions of the proposed small wireless facility, utility pole and other support structures and, and demonstrating compliance with this Section.

(6) Design. Documentation demonstrating compliance with Subsection 204-31. N. (3).

(7) Lighting. If lighting is required, the applicant shall provide a lighting detail demonstrating lighting that is as unobtrusive and inoffensive in effect as is permissible for compliance with state and federal regulations.

(8)FCC Compliance. Demonstration by a report by a qualified engineer that the small wireless facility will comply with all applicable standards established by the FCC regulations.

(9) 2017 National Electrical Safety Code. Demonstration of compliance with the 2017 National Electrical Safety Code and all applicable laws and regulations for the protection of underground and overhead utility facilities.

(10) Contractors; Subcontractors. Demonstration and attestation by the applicant that the applicant or its affiliate shall ensure that a contractor or subcontractor performing construction, reconstruction, demolition, repair, or maintenance work on a small wireless facility meets the following requirements:

(i) Maintains all valid licenses, registrations or certifications required by the Federal Government, the Commonwealth or the Borough that is necessary to do business or perform applicable work;

(ii) Maintains compliance with Workers' Compensation Act, the Unemployment Compensation Law, and bonding and liability insurance requirements as specified in the contract for the project;

(iii) Has not defaulted on a project, declared bankruptcy, been debarred, or suspended on a project by the Federal Government, the Commonwealth, or a local government entity within the previous three years;

(iv) Has not been convicted of a misdemeanor or felony relating to the performance or operation of the business of the contractor or subcontractor within the previous 10 years; and

(v) Has completed a minimum of the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the small wireless facility.

(11) Certification Statement. Each certification and each document required by this Subsection shall include the name, title (if applicable), business name (if applicable) and contact information of the document preparer, shall state the preparer's authority and, where applicable, qualifications (training, education, certification, licensing, etc.) to prepare the document, shall be signed by the preparer, shall contain a certification of accuracy and correctness, and shall bear the following statement immediately preceding the signature of the preparer: *The statements made in this writing are true and correct to the best of the knowledge, information and belief of the undersigned signatory, and made with the understanding that any false statement is subject to the penalties of 18 Pa.C.S.A. Section 4804, relating to "Unsworn Falsification to Authorities.*

(c) Complete Application. Upon receipt of the application, the Borough shall perform an administrative completeness review and within 10 business days of the date that an application for a small wireless facility use is filed with the Borough, the Borough shall notify the applicant in writing whether the application is incomplete, specifically identifying the missing information.

(d) Application Procedures. Upon submission of a complete application meeting the requirements of Section 204-31. N. (3):

(1) Collocated Facility. An application for a collocated small wireless facility shall within 60 calendar days of submission of a complete application be acted upon by issuance of a zoning permit or written notice of denial stating the grounds for denial.

(2) New or Replacement Utility Pole. An application to replace an existing utility pole or install a new utility pole upon which the small wireless facility shall be placed shall within 90 calendar days of submission of a complete application be acted upon by issuance of a zoning permit or written notice of denial stating the grounds for denial.

(e) Consolidated Application. An applicant may submit a consolidated application meeting the following requirements:

(1) The consolidated application does not exceed 20 small wireless facilities.

(2) No more than one consolidated application may be submitted in a 30-day period.

(3) If more than one consolidated application or 20 single applications are submitted within a 45-day period, the deadline for review shall be extended by 15 calendar days.

(f) Denial.

(1) The application may be denied if:

(i) The small wireless facility materially interferes with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the American with Disabilities Act of 1990 or similar Federal or State standard regarding pedestrian access or movement.

(ii) The proposed facility fails to comply with applicable codes including, but not limited to, this Section, the Borough's Stormwater Management Ordinance and Chapter 84 Streets and Sidewalks (highway occupancy/encroachment permit), and Pennsylvania's Uniform

Construction Code (adopting the International Building Code and the National Electric Code).

(iii) The proposed facility fails to comply with the requirements of the Small Wireless Facilities Deployment Act.

(iv) The applicant fails to submit a report by a qualified engineering expert which states that the small wireless facility will comply with applicable FCC regulations.

(2) If one or more small wireless facilities in a consolidated application is denied, such denial shall not delay processing of any other small wireless facilities in the same consolidated application.

(g) Zoning Permit Term.

(1) The right to construct a small wireless facility under the permit issued under this Section shall expire one calendar year from the date of issuance, unless the Borough agrees in writing to extend the period. A request for extension shall be in writing and shall state the reasons for extension.

(2) A permit issued under this Section shall expire in five years. The permit may be renewed for two additional five-year periods upon written request stating the reasons for extension, if the applicant:

(i) Is in compliance with the criteria set forth in the Small Wireless Facilities Deployment Act, this Section, and other applicable codes including, but not limited to, the Borough's Stormwater Management Ordinance and Chapter 84 Streets and Sidewalks (highway occupancy/encroachment permit) and Pennsylvania's Uniform Construction Code (adopting the International Building Code and the National Electric Code); and

(ii) has obtained the necessary consent from the owner of the utility pole.

(8) Facilities Removal; Discontinuation.

(a) The small wireless facilities and any associated equipment, including the utility pole and other support structures (if the wireless facilities and associated equipment are the only facilities on the utility pole), shall be removed within 60 calendar days of suspension or revocation of a permit due to noncompliance with the Small Wireless Facilities Act, this Section and other applicable codes including, but not limited to, the Borough's Stormwater Management Ordinance and Chapter 84 Streets and Sidewalks (highway occupancy/encroachment permit) and Pennsylvania's Uniform Construction Code (adopting the International Building Code and the National Electric Code), after provision of adequate notice of and an opportunity to cure any noncompliance.

(b) The small wireless facilities and any associated equipment, including the utility pole and any support structures (if the wireless facilities and associated equipment are the only facilities on the utility pole), shall be removed within 90 calendar days of the expiration of the permit or any extension period.

(c) Discontinuation.

(i) In the event that use of a small wireless facility is planned to be discontinued in advance of or upon expiration of a permit or any extension thereof, the owner shall provide written notice to the municipality of its intent to discontinue use and the date when the use shall be discontinued.

(ii) Failure to use such facility for a period of 180 calendar days in a 365-day period, excepting for purposes of active repair or modification), shall constitute a discontinuation.

(iii) All discontinued small wireless facilities shall be removed within 90 calendar days of the cessation of operations.

D. Appendix A, Table of Uses, Accessory Uses, is hereby amended to include "Small Wireless Facility Use (within a right-of-way)" as a use Permitted by Right (P) in all zoning districts, as follows:

Uses	LDR	MDR	TCR	TCMU	CI	Section
Small Wireless Facility Use (within a right-of-way)	P	P	P	P	P	§204-31.N.

SECTION 4: REPEALER

All other ordinances or parts of ordinances of Abbottstown Borough that conflict with this Ordinance are hereby repealed to the extent of the conflict. All other ordinances of the Borough not specifically amended or repealed hereby shall remain in full force and effect.

SECTION 5: SEVERABILITY

The provisions of the Ordinance are severable and if any of its provisions are determined by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall not affect or impair any of the remaining provisions of this Ordinance. It is hereby declared to be the intention of the Council that this Ordinance would have been adopted if such invalid or unconstitutional provision had not been included.

SECTION 6: CODIFICATION

This Ordinance shall become a part of Code of the Borough of Abbottstown, Adams County, Pennsylvania upon enactment.

SECTION 7: EFFECTIVE DATE.

This Ordinance shall take effect and be in full force and effect in accordance with Section 3301.3 (b) of the Borough Code.

DULY ADOPTED this ____ day of _____, 2022, by the Borough Council of Abbottstown Borough, in lawful session duly assembled.

ATTEST:

ABBOTTSTOWN BOROUGH

David W. Bolton, Secretary

Dennis R. Posey, President

Approved this ____ day of _____, 2022.

Honorable Daniel W. Watkins, Sr., Mayor