

**BOROUGH OF PROSPECT PARK
DELAWARE COUNTY PENNSYLVANIA**

ORDINANCE NO. ~~1344~~ 1361

**AN ORDINANCE CREATING A NEW CHAPTER IN THE
PROSPECT PARK BOROUGH CODE ENTITLED "SMALL
WIRELESS FACILITIES IN RIGHTS-OF-WAY" AND
PROVIDING FOR THE PURPOSE AND SCOPE, DEFINITIONS,
APPLICABILITY, ANNUAL RIGHT-OF-WAY FEES,
PERMITTING, APPLICATION, FEES, REGULATIONS,
REMOVAL AND COLLOCATION ON MUNICIPAL POLES**

WHEREAS, the Pennsylvania Borough Code authorizes the Borough Council of the Borough of Prospect Park (the "Council") to make and adopt ordinances consistent with the Constitution and laws of this Commonwealth and with the Charter; and,

WHEREAS, the Borough desires to regulate wireless infrastructure development by providing a fair and predictable process for the deployment of Small Wireless Facilities, while enabling the Borough to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and,

WHEREAS, the Borough recognizes that Small Wireless Facilities are being developed to deliver wireless access to advanced technology, broadband, and 911 services to homes, businesses, and schools within the Borough; and,

WHEREAS, the Borough recognizes that Small Wireless Facilities, including facilities commonly referred to as small cells and distributed antenna systems, may currently be deployed in the public rights-of-way by dictate of Pennsylvania statute; and,

WHEREAS, the Borough intends protect the health safety and welfare of its citizens and property by regulating Small Wireless Facilities while still fully comply with Commonwealth and federal law to the extent it preempts local municipal control;

NOW THEREFORE, be it enacted and ordained by the Borough Council of the Borough of Prospect Park, County of Delaware, Commonwealth of Pennsylvania that a new chapter be established in the Code of Ordinances of the Borough of Prospect Park entitled, "Small Wireless Facilities in Rights-of-Way", as follows:

SECTION I. CODE AMENDMENT.

A new Chapter is hereby established in the Code of Ordinances of the Borough of Prospect Park entitled, "Small Wireless Facilities in Rights-of-Way" to provide as follows:

Small Wireless Facilities in Rights-of-Way

Section 1 – Purpose and Scope

- A. Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities and associated utility poles in rights-of-way within the Borough of Prospect Park's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Borough's rights-of-way and the Borough as a whole.

- B. Intent. In enacting this Chapter, the Borough is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:
 - (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain Borough corridors, and other public ways and places;

 - (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

 - (3) limit interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;

 - (4) limit environmental damage, including damage to trees;

 - (5) respect the character of the neighborhoods and other areas in which facilities are installed; and

(6) regulate the deployment of small wireless facilities to protect the Borough's residents and property during the development of wireless services.

C. Zoning and Other Ordinances. Nothing in this Chapter shall be construed to limit or preempt the scope of the Borough's ordinances regulating zoning, land use, planning, streets and sidewalks, rights-of-way and permitting authority as such may relate to small wireless facilities.

Section 2 - Definitions

- A. "antenna" means telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.
- B. "applicable codes" or "applicable laws" means (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; and (2) local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances that comply with this act.
- C. "applicant" means a communications service provider that submits an application.
- D. "application" means a request submitted by an applicant to the Borough: (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.
- E. "Code" means the Code of Ordinances of the Borough of Prospect Park.
- F. "collocation" or "collocate" means to install, mount, maintain, modify or replace small wireless facilities on an existing utility pole or other wireless support structure.
- G. "communications facility" means 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.

- H. "communications service provider" means a (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 (47 U.S.C. § 153(51)); or (4) A wireless provider.
- I. "day" means a day when the Borough office is open for the conduct of business.
- J. "decorative pole" means a municipal pole that is specially designed and placed for aesthetic purposes.
- K. "FCC" means the Federal Communications Commission of the United States.
- L. "micro wireless facility" means 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.
- M. "municipal pole" means a utility pole owned, managed or operated by or on behalf of a municipality.
- N. "permit" means a written authorization required by the Borough to perform an action or initiate, continue, or complete a project.
- O. "rate" means a recurring charge.
- P. "right-of-way" means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Borough.
- Q. "small wireless facility" means 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.

- R. "Borough" means Prospect Park Borough, Delaware County, Pennsylvania.
- S. "utility pole" means 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.
- T. "wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (1) equipment associated with wireless services; and (2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated or the coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.
- U. "wireless infrastructure provider" means 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.
- V. "wireless provider" means a wireless infrastructure provider or a wireless services provider.

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

X. "wireless services provider" means a person who provides wireless services.

Y. "wireless support structure" 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.

Section 3 – Applicability; Annual Right-of-Way Fees; Permitting

A. Applicability and Right-of-Way Rates and Fees.

(1) A wireless provider shall be permitted to deploy a small wireless facility and associated new utility poles with small wireless facilities attached in the Borough right-of-way in accordance with the provisions and limits of the Pennsylvania Small Wireless Facilities Deployment Act (the "Act"), Act of June 30, 2021, No. 50, as such may be amended.

(2) An annual fee shall be charged for the use of the right-of-way to each wireless provider in the amount of \$270 per small wireless facility or \$270 per new utility pole with a small wireless facility.

(3) The annual fee shall be payable within ten (10) days of the issuance of a permit for the small wireless facility as provided in this Chapter and, thereafter, on or before January 1 of each succeeding calendar year.

(4) Borough Council may increase such fee in the future by Resolution upon a finding that:

(a) the permitted fee in the Act is amended; or,

(b) the Borough is able to demonstrate:

(i) the proposed right-of-way fee is a reasonable approximation of the Borough's costs to manage the right-of-way;

(ii) the Borough's costs under subsection (i) above are reasonable; and,

(iii) the proposed annual right-of-way fee is nondiscriminatory.

B. Permits Required.

(1) No person shall install a small wireless facility; or, install, modify or replace utility poles with small wireless facilities attached, within any Borough right-of-way without obtaining a permit therefore under this Chapter.

(2) No person shall (1) collocate, maintain or modify a small wireless facility; (2) replace existing utility poles for collocation; or, (3) install new utility poles with attached small wireless facilities, without first obtaining one or more additional permits of general applicability which may be required under the Code or any applicable code.

C. Application. All applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the Borough. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

D. Application Requirements. An application shall be made by the wireless provider or its duly authorized representative, and shall contain the following:

(1) The wireless provider's name, address, telephone number, and e-mail address; and, the name and same contact information for the representative of the wireless provider who would be able to respond to the Borough within one day.

(2) The applicant's name, address, telephone number, and e-mail address, if different than the wireless provider, and its interest in the work;

(3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.

(4) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

(5) A site plan, with sufficient detail to show the proposed location of items the applicant seeks to install in the right-of-way, including any manholes or poles, the size, type, and depth of any conduit or enclosure.

(6) An attestation that the small wireless facilities will be fully constructed by a wireless services provider within one year after the permit issuance date, unless the Borough and the applicant agree to extend this period.

(7) An attestation by the wireless provider that it shall fully indemnify and hold the Borough and its officers, employees and agents harmless against any claims, lawsuits, judgements, costs, liens, expenses or fees or any other damages caused by the act, error or omission of the wireless provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing or maintaining small wireless facilities or utility poles within the right-of-way.

(8) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.

E. Application Fees. All applications for permits shall be accompanied by a fee of \$500 for a single up-front application that includes up to five (5) collocated Small Wireless Facilities, with an additional \$100 for each collocated Small Wireless Facility beyond five; and \$1,000 in non-recurring fees for each new or replacement associated utility pole.

F. Consolidated Applications.

(1) An applicant seeking to collocate within the Borough may submit a consolidated application for collocation of up to twenty

(20) small wireless facilities, if all the small wireless facilities in the consolidated application are substantially the same type.

(2) the submission of any consolidated application shall be governed by the provisions of the Act.

G. Utility poles. When applying to install a new utility pole under this Chapter, 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.

Section 4 – Action on Permit Applications

A. Review of Small Wireless Facility and Utility Pole Applications.

(1) Within ten (10) days of receiving an initial application, the Borough will determine and notify the applicant whether the application is incomplete. If an application is incomplete, as determined in the Borough's discretion, the Borough will specifically identify the missing information. The processing deadline shall restart at zero on the date which the applicant provides the missing information. The processing deadline may be tolled by written agreement of the applicant and the Borough.

(2) All applications shall be processed on a nondiscriminatory basis, and the Borough shall approve or deny an application for:

- (a) collocation of small wireless facility on an existing, permitted structure within sixty (60) days of receipt of the completed application; or,
- (b) within ninety (90) days for applications to deploy a small wireless facility using a replacement or new, permitted structure.

(3) The Borough may deny a proposed collocation of a small wireless facility or installation or modification of a utility pole only if the proposed application:

- (a) 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 Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.
- (b) The small wireless facility fails to comply with applicable codes.
- (c) The small wireless facility fails to comply with the requirements specified under the Act.
- (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.

(4) The Borough shall document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant within five (5) business days of the denial. The applicant may cure the deficiencies identified by the Borough and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The Borough shall approve or deny the revised application within thirty (30) days of the resubmission. Any subsequent review shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other sections of the application that were not previously denied, the Borough shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

B. Permit Scope and Effect. Installation, modification, or collocation for which a permit is granted pursuant to this section shall be completed within one (1) year after the permit issuance date unless the Borough and the applicant agree in writing to extend this period. Approval of an application authorizes the applicant to:

1. 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; and
2. Subject to the permit requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated equipment on a utility pole covered by the permit for a period of not less than five (5) years, which shall be renewed for two (2) additional five (5) year periods if the applicant is in compliance with the criteria set forth in the Act and the applicant has obtained all necessary consent from the utility pole owner.

C. Authority Granted; No Property Right or Other Interest Created. A permit from the Borough authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

Section 5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

A. Technical Requirements. Small wireless facilities and utility poles installed to support small wireless facilities in the right-of-way shall comply with the following requirements:

- (1) Height of new small wireless facilities. New facilities, which shall include the utility pole and small wireless facility, may not be taller than fifty (50) feet above ground level.
- (2) The installation of a small wireless facility on an existing utility pole shall not exceed five (5) feet above the utility pole.

- (3) **Maximum Size.** The small wireless facility must conform to the size and height limitations as defined for a small wireless facility in this Chapter.
- (4) **Utility Poles.** Utility pole installations, modifications, and replacements relating to small wireless facility collocations shall be fabricated from material having a degree of strength capable of supporting the small wireless facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable standards. A modification, installation, or replacement shall be securely bound in accordance with applicable engineering standards. Utility poles shall be constructed of material the same as existing on the unit block of the right-of-way where it is installed and shall be of the same or substantially the same color and shape as the existing utility poles in the same unit block. If no utility poles exist in the same unit block, the material, color and shape shall be the same or substantially the same as the utility poles located in the nearest Borough unit block.
- (5) **Color.** To the extent technically feasible, small wireless facilities shall be the same or substantially the same color as the structure on which they are installed, unless a different color, approved by the Borough, is needed for public safety or service reliability reasons.
- (6) **Height Above Ground Level.** All small wireless facilities, wiring, cable, and equipment shall be placed on the utility pole or municipal pole at a height of not less than ten (10) feet above ground level.
- (7) **Wiring and Cabling.** Wires and cables connecting the antenna and appurtenances serving the small wireless facility shall be installed in accordance with the version of the National Electrical Code and National Electrical Safety Code adopted by the Borough and in force at the time of installation. In no event shall wiring and cabling serving the small wireless facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility, or telephone utility.
- (8) **Guy Wires Restricted.** Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be

attached to an existing utility pole that incorporated guy wires prior to the date of the small wireless application.

- (9) Grounding. The small wireless facility, including any wires, cables or equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Borough regarding grounding of wireless facilities.
 - (10) Signage. Other than the minimal size of warning or notification signs as required by federal law or regulations, or small identification and location markings, a small wireless facility shall not have signs installed thereon.
 - (11) Access. Wireless providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures, and small wireless facilities in the right-of-way at all times for purposes consistent with this Chapter and in accordance with the Code and any applicable law.
- B. Other Requirements. A wireless provider that seeks to collocate small wireless facilities or install or modify a utility pole supporting small wireless facilities shall be subject to the following requirements:
- (1) Small wireless facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small wireless facilities shall not be installed directly over any water, sewer, or reuse main or service line.
 - (2) Any tree-disturbing activity necessary for the installation or collocation of small wireless facilities and utility poles installed to support them shall comply with any applicable Shade Tree Commission and Borough Code and permitting requirements related to tree trimming and/or removal. Any trees removed for the installation, collocation or maintenance of a small wireless facility shall be replaced in a location in consultation with the Borough, in accordance with tree replacement requirements of the land development ordinances governing the Borough at that time.

- (3) Small wireless facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when Small Wireless Facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.
- (4) A wireless provider shall repair, at its sole cost and expense, any damages, including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to the Borough's streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines directly resulting from any activities performed in connection with the installation and/or maintenance of a wireless facility in the right-of-way and/or which affects any other land or the property of any private property owner or municipal property. The Wireless Provider shall restore such areas, structures, and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the wireless provider fails to make the repairs required by the Borough within 30 days after written notice, the Borough may perform those repairs and charge the wireless provider the reasonable, documented cost of the repairs plus a penalty not to exceed \$500. The Borough may suspend the ability of an applicant to receive a new permit form the Borough until the applicant has paid the amount assessed for the repair costs and the assessed penalty.
- (5) Small wireless facilities shall blend in with the surrounding environment or be otherwise concealed to the extent practicable.
- (6) No small wireless facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the Borough's Code of Ordinances.

C. Undergrounding Provisions. To the extent doing so would not result in an effective prohibition under applicable federal or state law, the applicant shall comply with requirements that prohibit communications service providers from installing structures in the right-of-way in areas

designated solely for underground or buried cable and utility facilities where the Borough has required all cable and utility facilities other than municipal poles and attachments to be placed underground by a date certain that is three months prior to the submission of the application. The Borough Engineer may authorize the replacement of municipal poles in the designated area upon good cause shown, as determined by the Borough Engineer. A wireless provider may seek a waiver of the requirements in this subsection, which may be granted by the Township Engineer or such person's designee, upon good cause shown, as determined by the Borough Engineer. Such waivers shall be granted in a nondiscriminatory manner.

D. Historic District or Building. The Borough may require reasonable technically feasible, nondiscriminatory and technologically neutral design or concealment measures in a historic district or on historic buildings, in accordance with the Act.

Section 6 – Removal, Relocation, or Modification of Small Wireless Facility in the ROW

(A) Removal of Equipment.

(1) Within 60 days of suspension or revocation of a permit due to noncompliance with the Act, this Chapter or any applicable law, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.

(2) Within 90 days of the end of a permit term or an extension of the permit term, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant's wireless facilities and associated equipment are the only facilities on the utility pole.

(B) Emergency Removal or Relocation of Facilities. The Borough retains the right to cut or move any small wireless facilities or utility poles located within the right-of-way, as the Borough may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the Borough shall notify the wireless provider and provide it an opportunity to move its small

- wireless facilities or utility poles prior to cutting or removing them, and in all circumstances shall promptly notify the wireless provider after cutting or removing a small wireless facility or utility pole.
- (C) Abandonment of Facilities. The Borough may require a wireless provider to remove an abandoned small wireless facility or utility pole permitted hereunder within 180 days of abandonment. Should the wireless provider fail to timely remove the abandoned small wireless facility or utility pole, the Borough, upon providing 60 days' prior written notice to provider, may remove the small wireless facility or utility pole to be removed and may recover the actual cost of such removal from the wireless provider. A small wireless facility or utility pole shall be deemed abandoned at the earlier of the date that the wireless provider indicates in any way that it is abandoning the small wireless facility or utility pole, or the date that is 180 days after the date that the small wireless facility or utility pole ceases to be used, unless the wireless provider gives the Borough reasonable evidence that it is diligently working to place the small wireless facility or utility pole back in service.

Section 7 – Collocation on Borough Poles

(A) Collocation. Applications to collocate small wireless facilities on Borough or municipal poles shall be processed in accordance with the provisions of this Chapter and the Act, unless the small wireless facility would cause structural or safety deficiencies to the municipal pole, in which case the municipality 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 not hinder travel or public safety within the right-of-way. Costs may be charged by the Borough to the wireless provider for make-ready and other work required under this subsection in accordance with the Act.

(B) No Small Wireless Facility shall be placed on any decorative pole.

SECTION II. That any Ordinance, or part of Ordinance conflicting with this Ordinance be and the same is hereby repealed in so far as the same affects this Ordinance.

SECTION III. The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any Court of competent jurisdiction to be illegal, invalid or unconstitutional, such

judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

SECTION IV. This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Borough of Prospect Park.

ADOPTED, this 12th day of October, 2021.

BY:

Patrick O'Connell
President

(SEAL)

Attest: _____
Deborah Hurst
Secretary

APPROVED:

Jeffrey Harris
Mayor