

**THE BOROUGH OF CATASAUQUA  
LEHIGH COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 1409**

**AN ORDINANCE AMENDING PART II OF THE CODE OF THE BOROUGH  
OF CATASAUQUA, “TITLED “GENERAL LEGISLATION” TO ADD A NEW  
CHAPTER 130-A RELATING TO DESIGN GUIDELINES IN CONNECTION  
WITH THE INSTALLATION OF SMALL WIRELESS FACILITIES**

**Section 1. Statement of Legislative History and Findings**

**WHEREAS**, the Borough Council (hereinafter, “Council”) of the Borough of Catasauqua (hereinafter, “Borough”) has adopted a series of Ordinances and codified the same in the Code of the Borough of Catasauqua (hereinafter “Code”); and

**WHEREAS**, Part II of the Code, titled “General Legislation” includes various Ordinances adopting and providing for certain uniform building, property maintenance, and safety codes and other regulations governing licenses, permits, general business regulations, streets and sidewalks, and public safety; and

**WHEREAS**, Council is aware of the development and desirability of, and need for, the deployment of 5G networks so as to increase bandwidths and speeds for mobile phone technologies; and

**WHEREAS**, Council acknowledges the roles of the Federal Government, including the Federal Communications Commission (hereinafter, “FCC”) and the Federal Courts, and the Commonwealth of Pennsylvania in regulating 5G providers and preempting certain aspects of the same; and

**WHEREAS**, Council observes that the Borough is an historic community, which includes 2 historic districts registered in the National Register of Historic Places including the “Catasauqua Residential Historic District” (also known as the “Mansion District”) and the “Biery’s Port Historic District”; and

**WHEREAS**, these Historic Districts are depicted and described on a Map and in a narrative attached hereto as **Exhibit A**; and

**WHEREAS**, the Borough was the home of George Taylor, a signer of the Declaration of Independence; and

**WHEREAS**, the George Taylor Home and property is now owned by the Borough and is an historic landmark located at 35 South Front St., in the Borough; and

**WHEREAS**, the Borough has numerous historic markers duly authorized by the Commonwealth; and

**WHEREAS**, Council recognizes a duty, consistent with Pennsylvania law and the public health, safety and welfare, to preserve, protect, and enhance the Borough's historic neighborhoods and structures;

**WHEREAS**, Council observes that it is critical to the future sustainability of the community to preserve, protect and enhance certain zoning districts including the Downtown Commercial, Conservation, and Waterfront Zoning Districts; and

**WHEREAS**, Council observes that the Borough is an urban community with densely developed residential areas; and

**WHEREAS**, Council acknowledges that on August 12, 2020, the United States Court of Appeals for the Ninth Circuit issued an Opinion in the case of *City of Portland v. The United States*, which addresses in part the creation and use of aesthetic guidelines by local municipalities for small cell facilities and holding that certain guidelines established by the FCC were inconsistent with federal law; and

**WHEREAS**, Council acknowledges the recent enactment of the Pennsylvania Small Wireless Facility Deployment Act on June 30, 2021, which defines and/or addresses, among other things, historic districts and buildings and the protection thereof, underground districts and the protection thereof and the creation of general design guidelines; and

**WHEREAS**, Section 1202 of the Borough Code provides numerous opportunities for the Borough to address design guidelines, including without limitation the following sub-sections:

a. 1202(4) authorizing the Borough to prohibit and remove any nuisance or dangerous structure on public or private ground, including obstructions or nuisances in the Borough streets;

b. 1202(5) authorizing the Borough to make regulations as may be necessary for the health, safety, morals and general welfare and cleanliness and beauty, convenience, comfort, and safety of the Borough; and

c. 1202(12) authorizing the Borough to, among other things, regulate the streets, sidewalks, and public grounds and to prohibit obstructions to their convenient use; and

**WHEREAS**, the Planning and Zoning Committee of Council and its consultants have prepared, design guidelines to address the unique requirements of the Borough which Council finds consistent with applicable law and the public health, safety, and general welfare; and

**WHEREAS**, Council considers it reasonable to provide a process for an applicant to seek a waiver of certain aesthetic guidelines in appropriate situations; and

**WHEREAS**, Council deems it necessary, appropriate and consistent with the public health, safety and welfare of the community to enact the design guidelines proposed by the Planning and Zoning Committee, subject to a reasonable waiver process.

**NOW THEREFORE**, be it hereby **ORDAINED**, and **ENACTED** as follows:

**Section 2. Text Amendment**

1. Part II of the Code of the Borough of Catasauqua, titled “GENERAL LEGISLATION,” is hereby amended to add a new Chapter 130-A, titled “DESIGN GUIDELINES FOR SMALL WIRELESS FACILITIES,” as follows:

“Chapter 130-A

**DESIGN GUIDELINES FOR SMALL WIRELESS FACILITIES**

Section 130-A-1. Compliance.

All applicants for permits to install, construct, keep, maintain, upgrade, relocate or replace Small Wireless Facilities, as that phrase is defined or referred to in various statutes, decisions of courts agencies, and ordinances, shall, except as otherwise set forth herein, comply with the design guidelines related thereto as adopted herein. Borough Council may, as it deems appropriate, revise, supplement or amend the design guidelines, or issue new guidelines by ordinance or resolution.

Section 130-A-2. Table 1.

The aesthetic guidelines applicable to all Small Wireless Facilities as described in Section 130-A-1 hereof are set forth in Table 1, which is incorporated herein by reference and made a part hereof.

Section 130A-3. Waiver or Modification.

A. Where the literal compliance with the mandatory aesthetic guidelines is unreasonable in that it is not technically feasible or reasonably directed at remedying the harm for which it seeks to protect, causes undue hardship, where an alternative standard is demonstrated to provide equal or better results or for other good cause shown; an applicant may seek a waiver or modification of the aesthetic guideline(s).

B. An applicant seeking a waiver or modification under this Section shall promptly file, so as not to delay the processing of the permit or other application, a written request therefor in the office of the Borough Manager.

C. The written request for a waiver or modification shall set forth with specificity the following:

1. The identity of each waiver or modification sought;
2. The grounds supporting each waiver or modification sought;
3. The proposed, alternative design; and
4. The exact location(s) of the proposed facilities, including the Zoning District and proximity to any historic district or building.

Each waiver or modification sought shall be consistent with the public health, safety and general welfare and the purpose and intent of the aesthetic guidelines.

D. The Borough Manager shall place the waiver request on the next agenda of the Borough Council.

E. Following consideration of the applicant's presentation and/or submission and with respect to both, any responses thereto, the Borough Council shall approve, conditionally approve, or deny the waiver or modification. The imposition of a condition to which an applicant disagrees shall be considered a denial.

F. The decision of Borough Council may be appealed in accordance with applicable law.

130-A-4. Penalties.

A. Any person who shall violate any provision of this Chapter 130-A shall, upon conviction thereof before a District Justice, be subject to a penalty or fine in an amount not less than \$100.00 and not more than \$1,000.00, together with the costs of prosecution and reasonable attorney fees incurred by the Borough in any enforcement proceeding, and in default of such penalty, fine or cost, to imprisonment for a term of not to exceed 30 days for each such violation. Each day or portion thereof that such violation continues and each such section of the Ordinance violated shall constitute a separate offense. The provisions of this Part shall be enforced in the same manner as provided for enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

B. Sub-section A notwithstanding, the Borough shall retain all other remedies and penalties authorized by Section 3321 of the Borough Code, including without limitation the institution of actions at law and in equity.

**Section 3. Effective Date.**

This Ordinance shall become effective after enactment by the Council of the Borough of Catasauqua and mayoral approval or as otherwise provided in Section 3301.3 of the Borough Code.

**Section 4. Protanto Repeal.**

Unless otherwise specifically stated in this Ordinance, all ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 5. Savings Clause.**

To the extent that any word, portion or provision of the text hereof is found by any court of competent jurisdiction to be invalid or void on constitutional or other grounds, such word, phrase, portion or provision shall, if possible, be deemed to be repealed and those remaining valid portions of the text shall remain in full force and effect if same can be accomplished without the structure of the Ordinance having been destroyed by the elimination of that word, phrase, portion or provision found to be invalid or void.

**DULY ENACTED AND ORDAINED** this \_\_\_\_ day of October, 2021, by the Borough Council of the Borough of Catasauqua, Lehigh County, Pennsylvania, in lawful session duly assembled.

**BOROUGH OF  
CATASAUQUA**

**ATTEST:** \_\_\_\_\_  
**Steve Travers,**  
**Secretary**

**BY:** \_\_\_\_\_  
**Vince Smith,**  
**Council President**

**AND NOW**, this \_\_\_\_ day of October, 2021, the above Ordinance is hereby **APPROVED** by the Mayor of the Borough of Catasauqua in due course.

**BY:** \_\_\_\_\_  
**Barbara Schlegel, Mayor**