

**BOROUGH OF BELMAR
ORDINANCE NO. 2024-18**

**AN ORDINANCE SUPPLEMENTING THE CODE OF THE BOROUGH
OF BELMAR BY AMENDING CHAPTERS 43 “SMALL WIRELESS FACILITIES IN
THE RIGHT-OF-WAY” TO FURTHER REGULATE SMALL CELL WIRELESS
FACILITIES WITHIN THE BOROUGH RIGHTS-OF-WAY**

WHEREAS, the Borough of Belmar is aware that certain technological developments have made access to its public rights-of-way desirable by certain telecommunications companies for the placement of small cell wireless facilities, including but not limited to, the installation of antennas, small cells and other communication devices and associated equipment (collectively the “Small Cells”); and,

WHEREAS, the Borough has determined that its public rights-of-way, such as they are or may be, themselves constitute a valuable resource, finite in nature, and which exists as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and,

WHEREAS, the Federal Telecommunications Act preserves local governments’ ability to manage the public rights-of-way on a competitively neutral and non-discriminatory basis pursuant to 47 U.S.C. 332 (c)(7)(A); and,

WHEREAS, New Jersey municipalities must give consent before a Small Cell, i.e., a small antenna, can be placed on existing poles pursuant to N.J.S.A. 48:3-19, and for the erection of new poles within the public rights-of-way pursuant to N.J.S.A. 48:17-10; and,

WHEREAS, the erection of new poles and ground level cabinets in the Public Right-of-Way raise significant aesthetic and safety concerns; and,

NOW THEREFORE, BE IT ORDAINED as follows:

Section 1. The Code of the Borough of Belmar is hereby amended and supplemented by the addition of the following:

Chapter 43 Small Wireless Facilities in the Right-of-Way

Section 43-4 Location and Siting.

A. General Siting Standards, Pre-Selected Locations.

- (1) Applicant shall restrict its Communications Facility and Pole placement to the locations selected and highlighted in Exhibit B to this ordinance, with said Exhibit B consisting of all locations in the Borough where Communications Facilities and Poles in the Public Right-of-Way are pre-approved as to location, with other terms and conditions subject to this Chapter.
- (2) Notwithstanding the above and anything contained in any prior ordinance, law or regulation to the contrary, Small Wireless Facilities are prohibited along Ocean Avenue, including on the boardwalk and beachfront adjacent to same, and also including the side streets abutting Ocean Avenue to a distance of 50’ from the intersection of each applicable side street with Ocean Avenue.
- (3) If said Exhibit B locations are deemed to be unacceptable or insufficient for Applicant’s network requirements, Applicant shall reasonably demonstrate why this is the case to the satisfaction of the Borough.
- (4) If Applicant can sufficiently demonstrate, to the Borough’s satisfaction, the conditions of subsection (2) above, then the Borough may approve additional locations for the placement of its Communications Facilities, with the fewest number of additional locations being approved as are necessary to meet the coverage requirements of Applicant.
- (5) Said Exhibit B shall be made available to Applicant in a GIS-compatible format upon request.

(Underlined sections are to be added)

Section 2. Severability.

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Belmar declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 3. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.