

INTRODUCED BY \_\_\_\_\_ INTRODUCTION \_\_\_\_\_  
SECONDED BY \_\_\_\_\_ HEARING \_\_\_\_\_  
ADOPTION \_\_\_\_\_

**BOROUGH OF CLIFFSIDE PARK  
COUNTY OF BERGEN, STATE OF NEW JERSEY**

**ORDINANCE 2021-02**

**BOROUGH OF CLIFFSIDE PARK SMALL CELL WIRELESS ORDINANCE**

**AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF BOROUGH CODE  
CHAPTER 26 TELECOMMUNICATIONS TOWERS AND ANTENNAS WITH THE  
ADDITION OF A NEW SECTION ENTITLED “TELECOMMUNICATIONS”**

**STATEMENT OF PURPOSE:** The purpose of this Ordinance is to provide for reasonable regulations concerning the placement of small cell wireless facilities within the Borough, consistent with state and federal law through the implementation of a right-of-way approval and permitting procedure.

**WHEREAS**, the Borough of Cliffside Park (“Borough”) is aware that the telecommunications industry is rapidly developing and there is a strong desire among telecommunications companies to look for areas within municipalities for the placement of small cell wireless facilities, herein known as “small cells,” “5G towers” and “personal wireless service facilities” by accessing rights-of-way within municipalities; and

**WHEREAS**, the rights-of-way are municipal properties and provide a valuable resource to its citizens by permitting the public to travel freely over and across these designated properties without unreasonable encroachments or interference; and

**WHEREAS**, the Borough recognizes that the use of these properties must be managed carefully with the utmost consideration given to general welfare and best interest of its citizens; and

**WHEREAS**, the Federal Telecommunications Act (“FTA” or “TCA”) preserves a local government’s ability to “manage the public rights-of-way...on a competitively neutral and non-discriminatory basis” (47 U.S.C. §253 (c)); and

**WHEREAS**, the FTA further preserves a local government’s authority over the “placement construction and modification of personal wireless service facilities” (47 U.S.C. §332(c)(7)(A)); and

**WHEREAS**, the FTA makes it unlawful for a local government to prohibit or have the effect of prohibiting the provisions of personal wireless service (47 U.S.C. 332(c)(7)(B)(i)(II)); and

**WHEREAS**, the FTA provides that municipalities “shall not unreasonably discriminate among providers of functionally equivalent services” (47 U.S.C. §332(c)(7)(B)(i)(I)); and

**WHEREAS**, recent developments in wireless technology, specifically the development of 5G technology, involve the placement of small cells, cabinets and equipment in municipal rights of-way; and

**WHEREAS**, pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 48:17-10 New Jersey municipalities must give consent before a small cell including a small antenna can be placed on existing poles or new poles erected within public rights-of-way; and

**WHEREAS**, the erection of new poles and ground level cabinets in the public right-of-way raises aesthetic and safety concerns including, but not limited to, concerns related to sight triangles and other safety related issues; aesthetic concerns and safety concerns associated with the use of roadways by the public such as the public's ability to pass and repass over same, and; the impact on the streetscape and character of residential neighborhoods; and

**WHEREAS**, pursuant to regulations adopted by the Federal Communications Commission ("FCC"), in order to ensure the safety of its citizens and preserve the aesthetic quality of the Borough, the Borough may impose regulations on related infrastructure including, but not limited to, small cells, all poles, antennas and cabinets located on municipal rights-of-way provided such aesthetic requirements and/or restrictions are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advanced; and

**WHEREAS**, the TCA further provides that municipalities may "require fair and reasonable compensation" from telecommunications providers for the use of the public right-of-way, provided said compensation is applied on a "competitively neutral and nondiscriminatory basis" among providers, and if said compensation is "publicly disclosed", 47 U.S.C. 253(c); and

**WHEREAS**, the FCC adopted an Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," (FCC-18-133A or "Carr's Order"), which was upheld, for the most part, by the Ninth Circuit Court of Appeals on August 12, 2020; and

**WHEREAS**, in pertinent part, the Court's Order 1) establishes safe harbors for fees that municipalities can charge for one-time event application processing as well as recurring fees for right-of-way access, which are presumed acceptable under the TCA; 2) provides that one-time fees and recurring fees, or rates, above the safe harbor levels may be imposed, and are not considered an effective prohibition of service within the meaning of the TCA (47 U.S.C. 253(c)) provided such fees are a reasonable approximation of actual costs, and the costs themselves are objectively reasonable, and non-discriminatory; and 3) places 60 and 90 day shot clock time limits on the municipal decision making process for applications for the placement of small wireless facilities, the replacement of existing poles and the placement of new poles in the public right-of-way; and

**WHEREAS**, the Borough has determined the most efficient way to effectuate this process is to set forth clear standards in relation to the positioning of poles, cabinets and antennas for the benefit of its citizens and any utilities that use or seek to make use of Cliffside Park's rights-of-way safely, and to require all technology companies seeking to use municipal rights-of way for the purpose of erecting telecommunication equipment apply for and be granted permits and, furthermore, pay the permitted fees, which may change from time to time, in accordance with legal thresholds established by the FCC, state and federal laws and court orders; and,

**WHEREAS**, the Borough has recommended that such additional provisions be mandatorily imposed within the Borough of Cliffside Park’s Revised General Ordinances (“RGO”) as part of the anticipated telecommunication development of municipal rights-of-way; and

**WHEREAS**, the current antenna code, RGO Chapter 26 Telecommunications Towers and Antennas is intended to govern macro cell sites on rooftops and freestanding towers and, thus, is insufficient to govern the unique circumstances and requirements of small cell facilities in the rights-of-way; and

**WHEREAS**, this Ordinance is limited to the installation of facilities in the public rights-of-way and shall have no effect on the installation of wireless telecommunications facilities and antennas on private lands pursuant to Chapter 26 Telecommunications Towers and Antennas; and

**WHEREAS**, the FCC Broadband Deployment Advisory Committee (BDAC) formed a Model Code for Municipalities Working Group and, in July 2018, published a Model Code for Municipalities for Small Wireless Facilities deployments. This model code is compliant with the Telecommunications Act, and FCC declaratory rulings and orders issued in 2009, 2014 and 2018. Thus, a municipality that adopts this code substantially in its original form will be in compliance with Federal laws and FCC guidelines for cell site deployments; and

**WHEREAS**, this Ordinance utilizes the FCC Model Code for Municipalities template to ensure compliance with Federal law and FCC regulations; and

**WHEREAS**, the Borough acknowledges that there may already exist a number of small cell facilities in the public rights-of-way that were approved under terms and conditions that would not be in compliance with this proposed ordinance; and

**WHEREAS**, in the event of any inconsistencies between this Chapter and any agreements, licenses or franchises in existence, which govern said existing small cell facilities, the provisions of this Chapter shall control, and shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Borough and parties in said licenses and agreements;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Cliffside Park, in the County of Bergen and State of New Jersey, as follows:

Section 1

Chapter 26 Telecommunications Towers and Antennas is hereby amended, supplemented and revised with the addition of a new article entitled “Telecommunications Facilities in the Public Right-of-Way” (Section 26-30), which shall read, in its entirety, as follows:

Heading: CHAPTER 26 SECTION 26-30 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Section 26-30

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**ARTICLE I. SHORT TITLE, PURPOSE AND DEFINITIONS**

**1.1 Short Title.**

This Section is titled the “Telecommunications Facilities in the Public Right-of-Way”, and amends all applicable provisions of the Borough of Cliffside Park Revised General Ordinances, and any existing local laws, rules, orders, resolutions and ordinances relating to the subject matter of this Chapter.

**1.2 Purpose.**

It is the intent of this Section 26-30 of Chapter 26 Telecommunications Towers and Antennas to regulate the placement of telecommunications equipment, including poles, towers, antennas and other infrastructure located on Municipal Rights-of-Way. The placement of telecommunications equipment outside of the Municipal Right-of-Way shall be governed by Chapter 26 Telecommunications Towers and Antennas, sections 26-1 through 26-29.

It is furthermore intended that this Section shall control in the event of any inconsistency between the provisions of this Section and any existing agreements, licenses or franchises in

existence and which govern existing Small Wireless Facilities in the Municipal Right-of-Way, and that the prevailing terms of this Section shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Borough and the applicable parties in said licenses and agreements.

### **1.3 Definitions.**

- a. “Administrative Review” means ministerial review of an Application by the Borough relating to the review and issuance of a Permit, including review by the Construction Official, Zoning Officer, Director of Public Works, engineer, wireless consultants with knowledge beyond the expertise of Borough personnel, or other Borough staff or designees to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Section. Administrative permit issuance is non-discretionary and based on whether an application is in conformity with the provisions of this Section, as well as any other applicable local, state and federal laws and regulations governing small cell deployment. This process does not involve the exercise of discretion.
- b. “Antenna” means communications equipment that transmits and/or receives over-the-air electromagnetic signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. “Applicable Codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Borough or otherwise are applicable in the jurisdiction.
- d. “Applicant” means a Person or entity who submits an Application under this Section.
- e. “Application” means a written request submitted by an Applicant to the Borough for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Support Structure, Pole, or Tower, or (ii) to construct, modify or Replace a new Support Structure, Pole or Tower or any other structure on which a Communications Facility will be Collocated.
- f. “Borough” means the Borough of Cliffside Park, or any agency, department, district, subdivision or any instrumentality thereof, including, but not limited to public utility districts, or municipal electric utilities. The term shall not include courts of the State having jurisdiction over the Borough or any entities that do not have zoning or permitting authority or jurisdiction. The Borough may hereinafter be referred to as the “Borough”, “the Borough of Cliffside Park”, “Cliffside Park” or “the Borough”.
- g. “Borough Pole” means a Pole owned, managed or operated by or on behalf of the Borough.
- h. “Collocate” means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. “Collocation” has a corresponding meaning. The term does not include the installation of a new Utility Pole, Tower or Support Structure in the Public Right-of-Way.

- i. “Communications Facility” means, collectively, the equipment at a fixed location or locations that enables communication between user equipment and a communications network, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.
- j. “Communications Service Provider” means a cable operator, as defined in 47 U.S.C. §522(5), a provider of information service, as defined in 47 U.S.C. §153(24); or a provider of telecommunications service, as defined in 47 U.S.C. §153(53); or provider of fixed wireless or other wireless services as defined in 47 U.S.C. §332(c)(7)(C)(i).
- k. “Decorative Pole” means a Borough Pole that is specially designed and placed for aesthetic purposes.
- l. “Deployable” means a portable, self-contained Wireless Facility that can be moved to a specified location or area and provide Wireless Services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.
- m. “Discretionary Review” means review of an Application by the Borough relating to the review and issuance of a Permit, that is other than an Administrative Review. Discretionary Review involves discretion on the part of the Borough (subject to any applicable limits on such discretion) in determining whether to issue a Permit and may be subject to one or more public hearings or meetings, including appearances before the planning board, zoning board of adjustment and referral to the Historic Preservation Commission for commentary and recommendations
- n. “Eligible Facilities Request” means an eligible facility request as set forth in 47 C.F.R. Section 1.6100(b)(3), as may be amended from time to time.
- q. “FCC” means the Federal Communications Commission of the United States.
- r. “Fee” means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.
- s. “Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C) or established pursuant to state historic preservation law.
- t. “Laws” means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- u. “Occupant” means any occupant of the Public Right-of-Way, including any Wireless Provider, Wireless Infrastructure Provider, utility company, or public or private entity with a physical presence or right to maintain a physical presence on, under or across the Public Right-of-Way.
- v. “Ordinary Maintenance, Repair and Replacement” means (i) with respect to a Communications Facility and/or the associated Support Structure, Pole or Tower,

inspections, testing, repair and modifications that maintain functional capacity, aesthetic and structural integrity, and (ii) with respect to a Communications Facility only, the replacement or upgrade of Antennas and/or other components of the Communications Facility (specifically, such as a swap out or addition of small cell Antennas and radio equipment as required by the Applicant), with Antennas and/or other components substantially similar, in color, aggregate size and other aesthetics to that previously permitted by the Borough (and/or consistent with the same height and volume limits for Wireless facilities under this Section), so long as the Support Structure, Pole, or Tower will structurally support, or prior to installation will be modified to support, the structural load. Modifications are limited to by the structural load analysis supplied by the Applicant to the Borough, and by the volume limits in Section 2.8 Design Standards. Modifications beyond the foregoing must be requested in writing by the Applicant and are subject to Discretionary Review by the Borough.

- w. "Permit" means a written authorization (in electronic or hard copy format) required by the Borough to initiate, continue, or complete installation of a Communications Facility, or an associated Support Structure, Pole, or Tower.
- x. "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Borough.
- y. "Pole" means a pole, such as a utility, lighting, traffic, or similar pole, made of wood, concrete, metal or other material, located or to be located within the Public Right of Way or Utility Easement. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached unless the Borough grants a waiver for such pole. The term does not include electric transmission poles or structures. A Pole does not include a Tower or Support Structure.
- z. "Provider" means a Communications Service Provider or a Wireless Provider.
- aa. "Public Right of Way", "Public ROW" or "Municipal ROW" means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the municipality.
- bb. "Rate" means a recurring charge.
- cc. "Replace" or "Replacement" means, in connection with an existing Pole, Support Structure or Tower, or Communications Facility, as the case may be, to replace (or the replacement of) same with a new structure, similar in design, size and scale to the existing structure and in conformance with current Borough building code, zoning provisions and other applicable regulations, in order to address limitations of, or change requirements applicable to, the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.6100 (b)(7).
- dd. "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider's Antenna (including, without limitation, any

strand-mounted Antenna) could fit within an enclosure of no more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services. The following additional parameters apply to Small Wireless Facilities: (i) Total height of Small Wireless Facility and supporting structure is less than 50 feet, or the Small Wireless Facility is mounted on structures no more than 10% taller than adjacent structures, or the Small Wireless Facility does not extend the existing structure to a height of greater than 50 feet or by more than 10% of the original height, whichever is greater.

- ee. "State" means the State of New Jersey.
- ff. "Support Structure" means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower.
- gg. "Tower" means any structure built for the sole or primary purpose of supporting a Wireless Facility, such as a self-supporting Tower, a monopole, a lattice Tower or a guyed Tower. Tower also includes a structure designed to conceal from the general public the Wireless Facility. A Tower does not include a Pole or a Support Structure.
- hh. "Utility Easement" means the area on, below, or above privately-owned property that has been designated for use as or is used for a specific utility purpose (such as for electric, cable or other utility purpose), and is evidenced by a recorded instrument in the public land records pursuant to a recorded plat, easement or right of way or is otherwise a legally enforceable easement, and does not include any portion of a Public Right of Way.
- ii. "Wireless Facility" means a Communications Facility installed and/or operated by a Wireless Provider. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one example of a Wireless Facility.
- jj. "Wireless Infrastructure Provider" means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider.
- kk. "Wireless Provider" means a Wireless Infrastructure Provider or a Wireless Services Provider.
- ll. "Wireless Services" means any wireless services including, without limitation, personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i), fixed wireless and other wireless services.



- mm. “Wireless Services Provider” means a Person who provides Wireless Services.

## **ARTICLE II. GOVERNANCE OF DEPLOYMENT IN THE PUBLIC ROW**

### **2.1 General Provisions of Agreement for Access to the Public ROW**

- a. Applicability. Except as otherwise provided herein, the placement, installation, modification, replacement, repair and upgrade of any Communications Facilities, including Small Wireless Facilities, as well as the associated Poles, Towers or Support Structures, in the Public Right-of-Way shall be governed by this Section.
- b. Notice Prior to Any Non-Emergency Work.
  - i. The Borough will appoint a Designee who will serve as the initial point of contact for the Borough for all matters pertaining to this Section.
  - ii. No action, application, installation, upgrade, maintenance, repair, replacement or, modifications by Applicant contemplated by this Section shall be commenced without first giving notice to the Borough Designee.
  - iii. This notice requirement pertains to all work, including ordinary maintenance, repairs, upgrades and like-for-like equipment swap outs.
- c. Municipal Agreement. Prior to receiving a Permit to install a Communications Facility in the Public ROW, each Applicant shall be required to enter into a Municipal Agreement (e.g., Right of Way Access Agreement, Pole Attachment Agreement, License Agreement) between the Borough and the Applicant, on terms and conditions substantially the same for all Applicants and existing Occupants of the Public ROW. The terms and conditions of such Municipal Agreement will include the following:
  - i. Fees and Rates. As consideration to the Borough for entering into the Municipal Agreement and also as a condition precedent for the issuance of any required permits and approvals to install the applicable Communications Facilities in the public right-of-way, the Applicant shall pay the required fees and rates as set forth in Schedule A of this Section, and which may be amended or modified from time to time per revision and modification to local, state and federal laws and regulations. Said fees shall include Application or One-Time fees and Recurring Right-of-Way Occupancy Rates.
  - ii. The Small Cell Permit Application Escrow, as described in Schedule A, shall be paid upon submission of an Application and shall be held in escrow and billed against actual incurred One-Time Fees and costs to process an Application, also as described below and in Schedule A of this Section. If said Small Cell Permit Application Escrow is insufficient to cover incurred One-Time Fees as described below and in Schedule A, then Applicant shall submit an additional amount equal to the initial Small Cell Permit Application Escrow to be further billed against incurred One-Time Fees and costs.
    - A. Reasonable Approximation: All one-time event fees will be a reasonable approximation of objectively reasonable costs.

- B. One Time Fees Apply to All Work: One-time fees and event fees apply to the initial installation of facilities as well as to any subsequent upgrade, replacement, modification or alteration of same, with each instance of an upgrade or repair being a separate project subject to One-Time Fees. Maintenance and repair work on an existing Communications Facility does not trigger any One Time Fees.
- iii. Annual ROW Occupancy Rate shall be as specified in Schedule A of this Section and shall be paid within thirty (30) days of the issuance of the applicable Permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the Term. However, under no circumstances shall the Rate be remitted later than ninety (90) days after the full execution of the applicable Municipal Agreement between Borough and Applicant.
  - iv. Annual Attachment Rate, equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Borough for the attachment of each Small Wireless Facility to Borough-owned structures in the Public Right-of-Way. This amount shall be paid within thirty (30) days of issuance of the applicable Permit(s) and annually thereafter. The annual rates in subsection 2.1(c)(A) and (B) combined shall not exceed \$270 annually per Small Wireless Facility location, or as subsequently amended by Federal or State Statutes or regulations.
  - v. All Fees and Rates will be applied in a non-discriminatory manner to all Communications Service Providers.
  - vi. Make-Ready Fee, shall be determined on a site-specific, engineering basis, for work reasonably necessary to make a particular Borough Pole suitable for attachment of the applicable Communications Facility shall be paid upon submission of the Application as more particularly described in subsection 2.3 below.
- d. Other Terms.
- i. Term. Unless otherwise agreed to in writing by the Borough and Applicant, the Agreement term shall be ten (10) years.
  - ii. Safety and Accessibility. The Applicant will demonstrate compliance with applicable safety and accessibility requirements, including those under Americans with Disabilities Act (“ADA”), OSHA and similar laws.
  - iii. The Municipal Agreement shall include, as an appendix thereof, a schedule containing the location of all proposed Small Wireless Facilities in the Public Right-of-Way, which the Borough and Applicant may update as necessary without the need for additional review. Said locations shall be as specific as possible and shall include, but not be limited to, latitude, longitude, the nearest proximate address, cross streets as well as lot and block numbers, if available. Applicants shall also provide for inclusion in the Municipal Agreement information indicating the horizontal and approximate vertical location, relative to the boundaries of the Public ROW, of all equipment which it owns or over which it has control and which is located in any Public Right-of-Way.

iv. Indemnification and Insurance Requirements.

- A. Insurance. The Applicant shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The Applicant may use any combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non-contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by the Applicant. Prior to the commencement of any work pursuant to this Agreement, the Applicant shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Applicant within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any of Applicant or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Agreement. Applicant shall notify the Borough Clerk within fifteen (15) days of receipt of any claim or demand of Applicant or its subcontractors, agents, employees, officer, servants, designees, guests or invitees by any aggrieved party for any work or action made pursuant to this Ordinance
- B. Indemnification. Applicant, its successors, assigns, contractors, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Applicant's actions under this Agreement and costs in connection therewith except to the extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the Borough, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Applicant's activities pursuant to the rights granted in this Agreement. This indemnification shall also specifically include that the Borough retains the right to choose its own defense counsel in regard to any action at law or equity pursuant to this section.

- v. Reliable 24/7 Emergency Notification Contact Information will be provided by the Applicant to the Borough and incorporated into the Agreement.
- vi. Additional Agreement Terms: Additional terms, such as for termination, assignment and sublicensing rights, shall be as negotiated between the Applicant and Borough.
- vii. Nondiscriminatory. Applications will be processed on a nondiscriminatory basis.

## **2.2 Permitted Communications Facility Uses/Administrative Review; Application**

- a. Permitted Use. The following uses within the Public ROW shall be a permitted use, subject to the entering into of a Municipal Agreement between Applicant and Borough as set forth in subsection 2.1(c) above, and Administrative Review and the issuance of a Permit as set forth in this subsection 2.2. All such uses shall be in accordance with all other applicable provisions of this Section, including without limitation, those set forth in subsection 2.5 below.
  - i. Collocation of a Small Wireless Facility.
  - ii. Collocation that qualifies as an Eligible Facilities Request.
  - iii. Modification of a Pole, Tower or Support Structure or Replacement of a Pole, for Collocation of a Communications Facility that qualifies as an Eligible Facilities Request or involves a Small Wireless Facility that does not exceed the maximum limitations set forth in subsection 2.3(c)(i)(A)(i) below.
  - iv. Construction of a new Pole or a monopole Tower (but no other type of Tower) to be used for Collocation of a Small Wireless Facility that does not exceed the maximum height and other applicable design standards set forth in this Section.
  - v. Construction of a Communications Facility, other than those set forth in subparagraphs (i), (ii) or (iii) in this subsection 2.2(a), involving the installation of coaxial, fiber-optic or other cabling, that is installed underground (direct buried or in conduit) or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
  - vi. Ordinary Maintenance, including any upgrade, repair, replacement, modification or alteration of a Communications Facility, with each upgrade, maintenance or repair being a separate instance subject to Administrative Review
  - vii. The Borough reserves and retains the right to subject any installation or modification contemplated in this section as well as in this Section to Discretionary Review subject to the 60 and 90 day Shot Clock guidelines of FCC-18-133A. This may include public hearings and zoning board of adjustment approval. The Shot Clock guidelines will be adhered to for Discretionary Reviews unless compelling and extraordinary circumstances suggest otherwise.

- viii. All other installations, modifications and replacements not subject to Administrative Review and that do not qualify as a Permitted Use are subject to Discretionary Review under Chapter 18 Zoning and Chapter 26 Telecommunications Antennas and Towers, as described in subsection 2.4 of this Section.
  
- b. Permit Required. No Person shall place any facility described in subsection 2.2 above in the Public ROW without first filing an Application for Administrative Review for same and obtaining a Permit thereof, except as otherwise expressly provided in this Section.
  
- c. Proprietary or Confidential Information in Application. The Borough shall make accepted Applications publicly available by reasonably available means such as a request pursuant to the Open Public Records Act (“OPRA”). Notwithstanding the foregoing, 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 portion of such materials accordingly, and the Borough shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” Laws and the Borough’s determination that the Applicant’s request for confidential or proprietary treatment of an Application material is reasonable. Confidential and proprietary information shall not include any information which is by law, regulation, ordinance, OPRA procedure and regulations or this Section, open and available for public inspection, including proposed Communications Facilities’ site locations.
  
- d. Administrative Review Application Requirements. The Application shall be made by the applicable Provider or its duly authorized representative and shall contain the following:
  - i. The Applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
  - ii. 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.
  - iii. (iii)A general description of the proposed work and the purposes and intent of the proposed facility or facilities. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
  - iv. Detailed construction drawings regarding the proposed facility, as required by the Uniform Construction Code of the State of New Jersey, or as otherwise stated and required under applicable Borough ordinances.
  - v. Demonstration of compliance with RF health and safety measures, as established by the TCA and FCC, via an RF Health and Safety Report. Applicant may utilize the RF Safety Reports provided in connection with the Municipal Agreement, as described in Section 2.1(d)(iv), for its applications for Administrative Review and Permit issuance.

- vi. Applicant shall demonstrate compliance with the subsection 2.8 Design Standards as they pertain to appearance, siting and height of the proposed Communications Facilities and their support poles, towers or other structures.
  - vii. To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a qualified engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.
- e. Applicant shall demonstrate compliance with applicable environmental, historical and landmark laws, rules and regulations, including SHPO and NEPA approval, as needed or applicable, including obtaining any necessary permits and approvals from the appropriate local, state or federal department agency or other governing body.
  - f. Ordinary Maintenance, Repair and Replacement. Ordinary maintenance and repairs may require administrative review and be subject to the provisions of subsection 2.1(b) and (c) of this Section, including notification to the Borough Designee of any proposed work, repairs, replacement and modification. This will include coordination with the Borough DPW and Police Department for necessary street closures and safety protocols, as well as the payment of any required fees required under subsection 2.1(a) above, or other municipal ordinances.
  - g. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the Borough within thirty (30) days after the condition necessitating the change.
  - h. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Section shall be accompanied by the Fees required under subsection 2.1(a) above.

### **2.3 Action on Administrative Review Applications**

- a. Review of Applications for Administrative Review.

The Borough shall review the Application in light of its conformity with applicable provisions of this Section, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:

- i. The Borough must act consistent with the following Shot Clock Dates:
  - A. Review of an Application to collocate a Small Wireless Facility using an existing structure: 60 days.
  - B. Review of an Application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
  - C. Review of an Application to deploy a Small Wireless Facility using a new structure: 90 days.

- D. Review of an Application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.
- ii. Tolling period: Unless a written agreement between the Applicant and the Borough provides otherwise, the tolling period for an Application (if any) is as set forth in paragraphs (1) through (3) of this section.
    - A. For an initial application to deploy Small Wireless Facilities, if the Borough notifies the Applicant on or before the 10th day after submission that the Application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the Applicant submits all the documents and information identified by the Borough to render the Application complete.
    - B. For all other initial Applications, the tolling period shall be the number of days from—
      - 1. The day after the date when the Borough notifies the Applicant in writing that the Application is materially incomplete and clearly and specifically identifies the missing documents or information that the Applicant must submit to render the Application complete and the specific rule or regulation creating this obligation; until
      - 2. The date when the Applicant submits all the documents and information identified by the siting authority to render the Application complete;
      - 3. But only if the notice pursuant to paragraph (B)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or
    - C. For resubmitted Applications following a notice of deficiency, the tolling period shall be the number of days from—
      - 1. The day after the date when the Borough notifies the Applicant in writing that the Applicant's supplemental submission was not sufficient to render the Application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Borough's original request under paragraph (B)(1) or (2) of this section; until
      - 2. The date when the applicant submits all the documents and information identified by the Borough to render the Application complete;
      - 3. But only if the notice pursuant to paragraph (B)(3)(i) of this section is effectuated on or before the 10th day after the date when the Applicant makes a supplemental submission in response to the Borough's request under paragraph (B)(1) or (2) of this section.

- I. The Borough must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including referencing specific code provisions and/or regulations upon which the denial was based, including any federal law, or local or state laws and regulations, provided said local and state laws and regulations do not conflict with federal law. Denial may include lack of conformity with the Borough codes, ordinances and regulations, as well as local, state and federal environmental, landmark and historical regulations. A decision to deny an application shall be in writing and supported by clear evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by the Borough. The review period or “shot clock” shall run until the written decision, supported by substantial evidence, is released and sent to the Applicant contemporaneously. The subsequent review by the Borough shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies.

b. **Undergrounding Provisions.** The Borough shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the Borough and all Public ROW Occupants to minimize disruption or discontinuance of service of all kinds to consumers, through mutual obligation to coordinate and timely complete such projects. An Occupant, including the Applicant, as the case may be, shall comply with nondiscriminatory Borough undergrounding requirements that 1) are in place and published prior to the date of initial filing of the Application, and 2) prohibit electric, telecommunications and cable providers from installing above-ground horizontal cables, Poles, or equivalent vertical structures in the Public ROW; and the Borough may require the removal of overhead cable and subsequently unused Poles. In areas where existing aerial utilities are being moved underground, Wireless Providers shall retain the right to remain in place, under their existing authorization, by buying out the ownership of the Pole(s), subject to the concurrence of the Pole owner and consent of the Borough (which consent may not be unreasonably withheld, conditioned or delayed) or, alternatively, the Wireless Provider may reasonably replace the existing Pole(s) or vertical structure locations for Antennas and accessory equipment, as a permitted use, within 50 feet of the prior location, unless a minimally greater distance is necessary for compelling public welfare. In neighborhoods or areas with existing underground utilities that do not have Small Wireless Facilities deployed as a permitted use, a new entrant Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures in the neighboring underground utility area. In neighborhoods or areas with existing underground utilities that do have Small Wireless Facilities deployed as a permitted use, a new entrant



Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures of Wireless Providers in the neighboring underground utility area. In neighborhoods with underground utilities, whether being converted from overhead utilities or initially underground, microwireless devices, typically strand-mounted, shall be treated like other Small Wireless Facilities in the Public ROW, requiring permitted use status, and subject to non-recurring and recurring Fees and Rates. However, in any event, no pole shall be erected within one hundred (100) feet of any existing utility pole.

c. Effect of Permit.

- i. 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 Section, and does not create a property right or grant Borough to the Applicant to impinge upon the rights of others who may already have an interest in the Public ROW
- ii. Duration. Any Permit for construction issued under this Section shall be valid for a period of six (6) months after issuance, provided that the six (6) month period shall be extended for up to an additional six (6) months upon written request of the Applicant (made prior to the end of the initial six (6) month period if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant.

d. Removal, Relocation or Modification of a Communications Facility in the ROW.

- i. Notice. Within ninety (90) days following written notice from the Borough, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility within the Public ROW whenever the Borough has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Borough improvement in or upon, or the operations of the Borough in or upon, the Public ROW, or pursuant to any redevelopment plan made pursuant to the Municipal Land Use Law contained in N.J.S.A. 40:55D, or any council resolution that approves any redevelopment plan for work that is performed by a private company other than the Borough. The Borough shall apply the same standards to all utilities in the Public ROW.
- ii. Emergency Removal or Relocation of Facilities. The Borough retains the right and privilege to cut power to or move any Communications Facility located within the Public ROW of the Borough, as the Borough may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the Borough shall notify the

Provider and provide the Provider an opportunity to move its own facilities prior to cutting power to or removing the Communications Facility and in all cases shall notify the Provider after cutting power to or removing the Communications Facility as promptly as reasonably possible.

- iii. (iii) Structural reconditioning, repair and replacement. From time to time, the Borough may paint, recondition, or otherwise improve or repair the Borough Poles in a substantial way (“Reconditioning Work”). The Provider shall reasonably cooperate with the Borough to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider’s approved use of the facility. Provider shall paint or recondition their existing pole to authentically match the Municipal recondition.
  - A. Prior to commencing Reconditioning Work, the Borough will use reasonable efforts to provide the Provider with at least sixty (60) days prior written notice. Upon receiving that notice, it shall be the Provider’s sole responsibility to provide adequate measures to cover, remove, or otherwise protect the Provider’s Communications Facility from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. The Borough reserves the right to require the Provider to remove all of the Provider’s Communications Facility from the Borough Pole and surrounding premises during Reconditioning Work, provided the requirement to remove same is contained in the written notice required by this Subsection. All cost associated with the protection measures, including temporary removal, shall be the sole responsibility of the Provider. The Borough will provide the Provider with a date by which its equipment must be protected or removed. The Provider may request a modification of the Borough procedures for carrying out Reconditioning Work in order to reduce the interference with Provider’s operation of its Communications Facility. If the Borough agrees to the modification, the Provider shall be responsible for all reasonable incremental cost related to the modification.
  - B. If the Borough Poles need to be replaced (“Replacement Work”), the Borough shall provide Provider with at least sixty (60) days written notice to remove its Communications Facilities. The Borough shall also promptly notify Provider when the Borough Poles have been replaced and Provider may re-install its equipment. During the Replacement Work, the Provider may maintain a temporary Communications Facility on the property, or after approval by Borough, on any land owned or controlled by Borough, in the vicinity of the property. If the property will not accommodate the Provider's temporary Communications Facility or if the parties cannot agree on a temporary location, the Provider, at its sole option, shall have the right to suspend the applicable permit, until the replacement Pole is installed, upon thirty (30) days written notice to the Borough.

C. If the Borough Poles need to be repaired due to storm or other damage (“Repair Work”), the Borough shall notify the Provider to remove its Communications Facilities as soon as possible. In the event of an emergency, the Borough shall contact the Provider by telephone at its emergency contact of record upon or prior to removing the Provider’s equipment. Once the Borough Poles have been replaced or repaired, the Borough will promptly notify the Provider that it can reinstall its equipment. During Borough Repair Work, the Provider may maintain a temporary Communications Facility on the property, or after approval by Provider, on any land owned or controlled by the Borough in the vicinity of the property. All cost associated with any removal or protection of Communications Facilities shall be the sole responsibility of the Provider, except to the extent caused by third-parties or the Borough.

e. Attachment to Borough Poles in the Public ROW.

i. Make-Ready. For any attachment to Borough Poles in the Public ROW, the Borough shall provide a good faith estimate for any make-ready work necessary to enable the Borough Pole to support the proposed facility, including Replacement of the Pole if necessary, within sixty (60) days after receipt of a completed Application requesting attachment to the Borough Pole, unless a longer period is required in order to comply with New Jersey law, including, but not limited to, Local Public Contracts Law (“LPCL”) and the New Jersey Local Unit Pay to Play. Make-ready work including any Pole Replacement shall be completed within one hundred and twenty (120) days of written acceptance of the good faith estimate by the Provider. Borough will make all reasonable estimates to complete the work within the stated timeframes. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the Borough. If Borough does not indicate it is willing to perform the make-ready work within the sixty (60) days after receipt of a completed Application requesting attachment to the Borough Pole, Applicant may perform the work itself consistent with Borough approval under this Section.

#### **2.4 Applications Requiring Discretionary Review and Approval.**

a. Discretionary Review Required. All other uses not expressly set forth or referenced in subsection -2.2(a) above shall require compliance with applicable Borough ordinance, including, but not limited to, Chapter 26 Telecommunications Towers and Antennas and the district zoning regulations and any other applicable laws and ordinances of the Borough.

#### **2.5 Other Public ROW Installation Requirements.**

a. General Principles.

i. The Borough shall have the power to establish reasonable and nondiscriminatory limitations on the placement of new or additional facilities within specific congested segments of the Public ROW if there is insufficient space to accommodate all of the requests of Applicants or other Persons to occupy and use the Public ROW. In

- making such decisions, the Borough shall to the extent possible accommodate all existing users and potential users (i.e. those who have submitted an Application to deploy facilities within the Public ROW) of the Public ROW, and shall be guided primarily by considerations of the public interest, the width and physical condition of the Public ROW, the time of year with respect to essential utilities, the protection of existing facilities in the Public ROW and established plans for public improvements and development projects which have been determined to be in the public's interest.
- ii. Fewest Possible New Poles / Use of Existing Poles: Applicant shall use existing poles when possible for the placement of its Small Wireless Facilities and shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet the coverage and capacity requirements. No new pole shall be erected within one-hundred (100) feet of an existing pole.
  - iii. Leasing of excess space in ducts, conduits and on a Pole is a matter between interested parties (subject to any applicable Pole Attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees or licensees of such physical facilities must still comply with the terms of this Section, unless otherwise expressly exempted by the Borough.
  - iv. An Occupant of the Public ROW shall employ due care during the installation and maintenance process, and comply with all safety and Public ROW-protection requirements of applicable Federal, State and local Laws (and any generally applicable Borough guidelines, standards and practices), and any additional commonly accepted safety and Public ROW- protection standards, methods and devices (to the extent not inconsistent with applicable Laws). All facilities under the streets of the Borough shall be kept and maintained in a safe and well-ordered condition, and in good order and repair.
    - A. Any permittee occupying any portion of the Public ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs and lights appropriate to the level of complexity of the activity in order to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic- control plan in accordance with the Manual on Uniform Traffic Control Devices, and existing procedures, including the Borough Work Site Evaluation process by which the construction office refers proposed work to the police department in order to develop safety measures to safeguard pedestrian and vehicular traffic as well as property. In the event of any conflict between the provisions of this subsection and the Work Site Evaluation process, the Work Site Evaluation procedures shall control.
    - B. Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the Borough notifies the Occupant in writing that the Borough or the Borough's designated contractor is assuming responsibility for traffic control.
    - C. Each Occupant shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the

Occupant's field employees and contractors for all job sites within the Public ROW.

v. Location of Existing Facilities.

- A. An Occupant of the Public ROW shall not place any fixtures or equipment where the same will interfere with any existing facility, and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.
- B. In the event that the Borough notifies the Occupant in advance that it is expressly interested in sharing the trenches or bores at a specific location area where construction is occurring, then the Occupant shall allow the Borough to place its infrastructure in the Occupant's trenches and bores as requested by the Borough. In these instances, the Borough will bear an incremental share of the costs of trenching, boring and the placement of conduit and infrastructure.
- C. Before beginning excavation in any Public ROW, an Occupant shall contact the regional notification center for subsurface installations (One-Number Locator Service) to determine possible conflicts.

vi. Abandonment of Facilities.

- A. Any Occupant of the Public ROW, including any Applicant, Wireless Provider or Wireless Infrastructure Provider, that intends to permanently discontinue use of any facilities within the Public ROW shall notify the Borough in writing within thirty (30) days prior to abandonment. Such notice shall describe the facilities for which the use is to be discontinued, and the date of discontinuance of use. Upon notification, at its discretion, the Borough will choose from the following options within 14 days or any other agreed upon option, and so notify the Occupant of its decision:
  - 1. Abandon the facilities in place and the Occupant shall further convey full title and ownership of such abandoned facilities to the Borough. The Occupant is responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the Borough is completed; or
  - 2. The facilities shall be removed and the Occupant shall be liable for removing the facilities at its own cost. If an Occupant fails to remove facilities that the Borough requires it to remove, after ninety (90) days notice to the Occupant, the Borough may perform the work and shall be entitled to collect the cost from the Occupant its successors and/or assigns.

b. Additional Requirements.

- i. General. All deployments of Communications Facilities in the Public ROW shall comply with the following:
  - A. Compliance with ADA and other applicable Federal, State and local Laws and standards.

- B. Pedestrian and vehicular traffic and safety requirements established by the Borough.
- C. Existing Public ROW occupancy or management ordinances, not otherwise inconsistent with this Section.
  - 1. Additional Permits. In addition to obtaining a Permit for installation of a Communications Facility in the Public ROW, an Applicant must obtain the following additional permits and approvals, as well as provide notice where indicated:
    - I. Notification to Borough Designee for all work contemplated in this Section, pursuant to subsection 2.1
    - II. Construction Permit (including building and electrical subcodes), per statutory fees established by uniform construction code regulations contained in N.J.A.C. 5:23.
    - III. Zoning Permit, as applicable, per this Section
    - IV. Street Opening Permit, if applicable, per Borough code Chapter 13 Streets and Sidewalks.
    - V. Telecommunications Consultation and Review performed by the Borough Designee or other such official of the Borough or professional contracted by the Borough, to include permit review, construction oversight for code and zoning compliance and post-installation inspection to ensure compliance with the technical specifications.
    - VI. Engineering Review by an outside consultant, as needed
    - VII. Discretionary Review: For Small Wireless Facilities applications not subject to Administrative Review pursuant to this Section.
- D. Existing Utility Easements in the Public Right of Way.
  - 1. Applicants will work with the Borough engineer to coordinate and protect existing utilities in the Public ROW.
  - 2. Applicants will coordinate with the Borough engineer all public safety considerations prior to and during installation in the Public ROW to ensure public safety response in the case of gas line, water line or electric Borough disturbance.
- E. All newly constructed poles shall be installed on the same side of the street as currently existing poles. Under no circumstance shall this Ordinance permit the construction and/or installation of a pole on both sides of the street.

**2.6 Attachment to and Replacement of Decorative Poles.**

Notwithstanding anything to the contrary in this Section, the Borough may request that Applicant install a Small Wireless Facility on a new Decorative Pole, or Replace an existing Decorative Pole with a new Decorative Pole that is in keeping with the aesthetics of the existing Decorative Pole or the surrounding streetscape only upon satisfaction of the following additional requirements:

- a. Issuance of a Permit under subsection 2.2(a) above.
- b. The new Decorative Pole, Small Wireless Facilities attachment and/or the Replacement Decorative Pole is in keeping with the aesthetics of the Decorative Pole and surrounding streetscape in the judgement of the Borough.

### **2.7 Batch Applications.**

An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Borough's approval, batch Application requirements and file a consolidated Application and receive multiple permits or a single Permit for multiple Communications Facilities. The Borough's denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The Borough shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.

### **2.8 Design Standards.**

All above-ground Communications Facilities in the Public ROW requiring Administrative Review only shall conform to the following non-discriminatory design guidelines generally applicable to all facilities in the Public ROW:

- a. Siting and Design Requirements:
  - i. Pole Siting Standards. New Poles for use as support structures for Small Wireless Facilities shall conform to the following siting standards:
    - A. Height. No Proposed Pole shall be taller than forty (40) feet or 110% of the height of Poles in the surrounding streetscape, whichever is higher.
    - B. Location, Safety and Aesthetics. No Proposed Pole shall be erected in the Right-of-Way unless it:
      1. Is approved pursuant to the provisions of this Section;
      2. Replaces an Existing Pole; or
      3. Does not inhibit any existing sight triangles or sight distances; and
      4. Allows adequate room for the public to pass and repass across, along and through the Right-of-Way; and
      5. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to

blend in compatibly with its background and so as to minimize its visual impact on surrounding properties.

6. Is compliant with Chapter 13 Streets and Sidewalks of the Borough Ordinance as well as any applicable local and state laws and regulations pertaining to the installation of utility poles in the right-of-way, including promulgated by the Board of Public Utilities requiring approval of proposed locations prior to installation.

ii. Ground Level Cabinet Siting Standards. Ground level cabinets shall conform to the following siting standards:

- A. Ground level cabinets are prohibited in the Public Right-of-Way in residential zones and any future residential zones.
- B. Ground level cabinets are permitted in non-residential zones provided that such Ground Level Cabinet:
- C. Is less than twenty-eight (28) cubic feet in volume; and
- D. Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
- E. Does not inhibit any existing sight triangles or sight distance; and
- F. Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.

iii. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.

iv. Pole mounted antennas are permitted on Existing Poles, provided that each pole mounted antenna:

- A. Does not exceed three (3) cubic feet in volume; and
- B. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
- C. Does not inhibit any sight triangles or sight distance; and
- D. Allows adequate room for the public to pass and repass across, along and through the Public Right-of-Way.
- E. Pole mounted cabinets are permitted on Existing Poles in all residential zones and non-residential zones provided that each pole mounted cabinet:
  1. Does not exceed sixteen (16) cubic feet; and
  2. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
  3. Does not inhibit any sight triangles or sight distance; and



4. Allows adequate room for the public to pass and repass across the Public Right-of-Way.

b. Maximum Height Requirements.

- (i) Maximum Size of Permitted Use. Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures (subject to the further limitation for Replacement of Support Structures described in subsection 1.2(ff) above) to be used for Collocation of Small Wireless Facilities may be placed in the Public Right of Way as a permitted use in accordance with this subsection 2.2, subject to the following requirements.

- A. Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed the greater of:

1. Five (5) feet above the tallest existing Pole, Tower or Support Structure not exceeding 50 feet in the Public ROW, in place as of the effective date of this Section, and located within 500 feet of the new proposed Pole, Support Structure; or ten (10') feet on utility distribution poles where required by the electrical utility separation requirements; or
2. Fifty (50) feet above ground level.

- B. Each modified or Replacement Pole, Tower, or Support Structure installed in the Public ROW shall not exceed the greater of:

1. five (5) feet above the height of the structure being modified or replaced in place as of the effective date of this Section; or ten (10) feet on utility distribution poles where required by the electrical utility separation requirements; or
2. the height limit under this subsection 2.8(B)(i)(A)

## **ARTICLE III. MISCELLANEOUS TERMS**

### **3.1 Preexisting Sites and Municipal Agreements.**

Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of the provisions of this Section, whether or not a Municipal Agreement exists or is in force and effect with regard to same, shall be required to comply with the provisions of this Section.

Any Municipal Agreements entered into between the Borough and any Provider regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Section. To the extent the provisions of any existing Municipal Agreement conflict with this Section, said provisions shall be replaced and superseded by the applicable terms of this Section.

### **3.2 New Jersey One Call**

Prior to the start of any installation of Poles, Small Wireless Facilities or other Communications Facilities that requires excavation, Applicant shall contact New Jersey One Call at 811 at least three (3) full business days prior to the commencement of work.

### **3.3 “Dig Once” Requirements**

For all installations of Communications Facilities and Small Wireless Facilities that require the installation of above ground and underground communications and power cabling and conduit, along the Public ROW as well as utility easements and private property, the Borough’s Department of Public Works or Construction Office may request that the project developer publicly offer to coordinate with Providers who operate, or have applied for facilities in the Borough through the Department of Public Works or other applicable department or agency to ensure the Public ROW and any planned utility easements are adequate to accommodate the deployment of both aboveground and underground Communications Facilities. Specifically, planned utility easements should allow for an adequate number of huts, utility Poles and other structures, as well as belowground conduit, to adequately serve current and anticipated Communications Facilities. Access to easements should be provided to Providers on a non-discriminatory basis and at a reasonable cost, or pursuant to applicable Laws.

### **3.4 Violation of this Section:**

Violation of any of the provisions of this Section shall be a simple citation punishable with a civil penalty of \$500 for each violation which continues more than ten (10) days after written notice of such violation is provided to the Applicant. Each day, after such notice, that a violation occurs or is permitted to exist by the Applicant constitutes a separate offense.

### **3.5 Governance of Deployments Outside of the Public Right-of-Way.**

This section is intended to govern the installation, placement, maintenance, modification, upgrade and repair of Communications Facilities, including Small Wireless Facilities, in the Public Right-of-Way. The placement of telecommunications equipment outside of the Public Right-of-Way shall be governed by Chapter 26 Telecommunications Antennas and Towers, as well as by other applicable codes and ordinances of the Borough.

### **3.6 Waiver.**

The Borough Council, or other Borough person, agency or department with the authority to do so, may waive any provision or standard set forth in this Section where it is demonstrated that the strict enforcement of said standard:

- a. Will prohibit or have the effect of prohibiting any telecommunications service pursuant to 47 U.S.C. 253(a); or
- b. Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- c. (iii) Will violate any requirement set forth in the FCC Order entitled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,” WT Docket No. 17-79; “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,” WC Docket No. 17-84; or

- d. Will prohibit, or have the effect of prohibiting, the ability of an entity to provide wireless service to any prospective customer within the Borough.

**3.7 Effective Date.**

This Section shall take effect twenty (20) days after its adoption by the Borough Council.

**Schedule A**

<b>One Time Fees*</b>	<b>Rate*</b>	<b>Frequency</b>	<b>Note</b>
Small Cell Permit Application Escrow	\$1000, per new installation or \$500 per modification or upgrade. To be held in escrow and billed against actual incurred costs per the below schedule of fees:	Per install or upgrade	Escrow to be used against incurred expenses. Any expense amounts above the escrow shall be invoiced to Applicant directly
Construction Permit	Per Section	Per install or upgrade	Building/electrical
Zoning Permit, if applicable	Per Section	Per install or upgrade	Structure/addition
Street Opening Permit	Per Section	Per street opening	
Telecommunications Consultation and Review by Borough Designee	\$350/hour	Per install or upgrade	Up to 3 hours/site
Engineering Review	Per agreement between the Borough and the Borough engineer or contracted engineering firm		
<b>Recurring Fees*</b>			
ROW Access Fee (including attachment fee to Borough Pole, if applicable)	\$270	Annual Access Rate	Per small cell site

\*The fees described in this Schedule A are the fees in effect at the time of the adoption of this ordinance. All fees are subject to change as existing ordinances are amended and future ordinances adopted and future contracts and agreements entered into and effectuated by resolution. Any amendment, revision or addition to a Borough ordinance supersedes any prior inconsistent ordinances. The Borough reserves the right to amend the fee portion of this ordinance only by resolution.

**SEVERABILITY.** If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid in whole or in part or as applied to any particular

circumstance or individual by a court of competent jurisdiction, such order of judgment shall not effect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this ordinance.

**REPEALER.** All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies only.

**EFFECTIVE DATE.** This ordinance shall take effect immediately upon final passage and publication as required by law.

**INTRODUCED** \_\_\_\_\_, **2021**

**ADOPTED** \_\_\_\_\_, **2021**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Sercan Zoklu, Borough Clerk**

\_\_\_\_\_  
**Thomas Calabrese, Mayor**