

CITY OF ENGLEWOOD

ORDINANCE #23-05

AN ORDINANCE AMENDING CHAPTER 380 STREETS AND SIDEWALKS OF THE CITY CODE OF THE CITY OF ENGLEWOOD TO ADD ARTICLE XI “TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

WHEREAS, the Governing Body of the City of Englewood seeks to establish uniform standards and regulate the placement of telecommunications equipment, including poles, cabinets, and other infrastructure located within municipal rights-of-way in a manner that will provide public benefit and will preserve the integrity, public safety and aesthetics of the municipal right-of-way.; and

WHEREAS, the following is to establish Article XI Telecommunications Facilities in the Public Right-of-Way in Chapter 380 Streets and Sidewalks; and

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Englewood as follows:

Chapter 380 Streets and Sidewalks

Article XI Telecommunications Facilities in the Public Right-of-Way

§380-58 Definitions

"Anticipated Municipal Expenses" mean the cost of processing an application including, but not limited to, all professional fees such as engineer and attorney costs incurred by City.

"Applicant" means the person or entity seeking to place a Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way or Public Grounds that submits an Application, and the agents, employees, and contractors of such person or entity.

"Application" means either a New ROW Installation Application or an Existing ROW Installation Application, submitted by an Applicant to the City for purposes of procuring a Right-of-Way Permit.

"Backup Power Capable" shall mean that the facility is capable of being connected to a generator, batteries, or other power source when the Electric Distribution System is down and so that the facility is capable of operating independently from same.

"Cabinet" shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-Way.

"City Council" means the City Council of the City of Englewood.

"City Clerk" means the person appointed to be the City Clerk for the City of Englewood pursuant to N.J.S.A. 40A:9-133

"City Engineer" means the person appointed to be City Engineer for the City of Englewood pursuant to N.J.S.A. 40A:9-140.

"Co-location" means to install or mount equipment, Cabinets or Small Wireless Facilities on, under, or within a pre-existing communications facility, Pole, Existing Pole, Cabinet, Existing Cabinet or other support structures in the Municipal Right-of-Way or Public Grounds.

"Electric Distribution System" shall mean the part of the electric system, after the transmission system that is dedicated to delivering electric energy to an end user.

"Existing Cabinet" means a Cabinet that is in lawful existence within the Municipal Right-of-Way or Public Grounds, including ground mounted and at grade installations.

"Existing Facility" means an Existing Small Cell Wireless Facility, Existing Cabinet, or Existing Pole that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

"Existing Pole" shall mean a pole that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

"Existing Provider" means the entity currently utilizing any Small Wireless Facility within the Municipal Right-of-Way or Public Grounds.

"Existing Small Cell Wireless Facility" means an Existing Small Cell Wireless Facility that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

"Existing ROW Installation Application" means a formal written request in compliance with the requirements as established by the City for Right-of-Way Permit to construct or install a Small Wireless Facility on an Existing Facility within a Municipal Right-of-Way or Public Grounds submitted by an Applicant to the City Engineer in accordance with this Article

"Ground Level Cabinets" shall mean a Cabinet that is not attached to an existing pole and is touching or directly supported by the ground.

"Municipal Right-of-Way" shall mean the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like,

held by the City as an easement or in fee simple ownership. This term also includes rights-of-way held by the County of Bergen where the City's approval is required for the use of same pursuant to N.J.S.A. 27:16-6. This term shall not include private roadways.

"New ROW Installation Application" means a formal written request in compliance with the requirements as established by the City for a Right-of-Way Permit to construct or install a Pole or Cabinet in a Municipal Right-of-Way submitted by an Applicant to the City Engineer in accordance with this Article.

"Pole" shall mean a long, slender, rounded piece of wood or metal.

"Pole Mounted Antenna" shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells, and outside distributed antenna systems.

"Pole Mounted Cabinet" shall mean a Cabinet that is proposed to be placed on an Existing or Proposed Pole.

"Powered Communications Equipment" shall mean telecommunications equipment that has the ability to operate, by way of a generator, off of the electrical grid.

"Proposed Cabinet" means a Pole mounted Cabinet that is proposed to be placed within the Municipal Right-of-Way or Public Grounds.

"Proposed Pole" shall mean a Pole that is proposed to be placed in the Municipal Right-of-Way.

"Replace or Replacement" shall mean 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 City 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 co-location of a communications facility. In connection with replacement of a pole or tower to support co-location of a wireless facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.6100 (b)(7).

"Right-of-Way Agreement" shall mean an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.

"Right-of-Way Installation" means the Pole, Cabinet and/or Small Wireless Facility installed within the Municipal Right-of-Way or Public Grounds in accordance with a Right-of-Way Permit.

"Right-of-Way Permit" shall mean an approval from the City setting forth applicant's compliance with the requirements of this Chapter.

"Small Wireless Facility/ies" means antennas, equipment, cables, wires, conduits and other appurtenances attached to Poles or located within Cabinets used to transmit, receive, distribute and provide Personal Wireless Services and communication services and as further defined in the FCC Order.

"Surrounding Streetscape" shall mean Existing Poles within the same right-of-way which are located within five hundred (500) feet of the Proposed Pole.

"Utilities Regulated by the Board of Public Utilities" shall mean companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes.

"Utility Service" shall mean electric, telephone, or cable service.

"Zone, Non-Residential" shall mean N-C, SBD, L-I, RIM, Zones as designated in §250-54 Establishment of Districts.

"Zone, Residential" shall mean the R-AAA, R-AA, R-A, R-B, R-C, R-D, R-E, R-E(2), R-F, RMA, RMB, RMC, RMD, RME, RMH, RMF, ATH, D-1, D-2, D-3 Zones as designated in §250-54 Establishment of Districts.

§380-59 Purpose

- A. It is the intent of this article of Chapter 380 of the City of Englewood Ordinance to establish uniform standards and regulate the placement of telecommunications equipment, including poles, cabinets, and other infrastructure located within municipal rights-of-way in a manner that will provide public benefit and will preserve the integrity, public safety and aesthetics of the municipal right-of-way. The placement of telecommunications equipment outside of

the municipal right-of-way shall be governed by Chapter 250, Article XVI Telecommunications Facilities.

§380-60 Applicability

- 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 Article.
- B. Any person or entity wishing to place Small Wireless Facilities, Cabinets or Poles within the Municipal Right-of-Way or Public Grounds shall be subject to the standards and procedures set forth within this Article and shall be required to:
 - a. Obtain a Right-of-Way Permit for the siting and installation of Small Wireless Facilities, Cabinets and Poles within the Municipal Right-of-Way; and
 - b. Enter into a Right-of-Way Agreement with the City.

§380-61 Right-of-Way Agreements

- A. No person or entity shall operate or place any type of Pole Mounted Antenna, Ground Cabinet, or similar infrastructure, without first entering into a Right-of-Way Agreement pursuant to the provisions of this Article. The terms of the Right-of-Way Agreement shall include:
 - (1) Term. Unless otherwise agreed to in writing by the City and applicant, the agreement term shall be 10 years, subject to automatic renewal for two additional five-year terms, pending termination as set forth in the Right-of-Way Agreement.
 - (2) Location. Either within the Agreement itself, or as an appendix thereof, a schedule containing the location of all proposed small wireless facilities in the public right-of-way, which the City. 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.

- (3) Fines or unauthorized installations, including unauthorized expansions, or co-locations.
- (4) Insurance requirements. The Agreement shall include reasonable insurance requirements addressing coverage per occurrence and in aggregate. Prior to the commencement of any work pursuant to this agreement, the applicant shall file with the City a certificate(s) of insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The City shall notify the applicant within 15 days after the receipt of any claim or demand to the City, either by suit or otherwise, made against the City on account of any of applicant or its subcontractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this agreement. The applicant shall notify the City Clerk within 15 days of receipt of any claim or demand of the 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 article.
- (5) Indemnification. The agreement shall include provisions regarding indemnification as it relates to applicant, its successors, assigns, contractors, subcontractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the City, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees.
- (6) Reliable 24/7 emergency notification contact information will be provided by the applicant to the City and incorporated into the agreement.
- (7) Additional agreement terms: Additional terms, such as for termination, assignment and sublicensing rights, shall be as negotiated between the applicant and City.

§380-62 Telecommunications Siting Standards

All aboveground communications facilities in the municipal right-of-way shall conform to the following nondiscriminatory design guidelines generally applicable to all facilities in the municipal right-of-way:

- A. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit and execution of a Right-of-Way Agreement.

B. Height. No Pole shall be taller than thirty five (35) feet or 110% of the height of Poles in the Surrounding Streetscape, whichever is taller.

C. Location, Safety and Aesthetics. No Pole shall be erected in the Right-of-Way unless it:

- (1) Is used to bring Utility Service across the Right-of-Way to an existing or proposed development from an Existing Pole; or
- (2) Is replacing an Existing Pole; or
- (3) Located on the opposite side of the street from the Electric Distribution System; and
- (4) For sites in the Residential Zones and historic districts is two hundred linear feet from any other Existing Pole or Proposed Pole along the same side of the street, or for sites in the Non-Residential Zones is one hundred linear feet from any other Existing Pole or Proposed Pole along the same side of the street; and
- (5) Is not located in an area with Underground Utilities; and
- (6) Does not inhibit any existing sight triangles or sight distance; and
- (7) Allows adequate room for the public to pass and re-pass across the Municipal Right-of-Way; and
- (8) Is finished and/or painted and 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.

D. Ground-level cabinet siting standards. Ground-level cabinets shall conform to the following siting standards:

(1) Non-preferred locations - Residential Zones are a are a non-preferred location for Ground Cabinets in the public rights-of-way;

(a) A Small Wireless Facility, Pole, or Cabinet may be permitted in a location other than a Preferred Location identified in this section if the Applicant provides evidence, as required and determined by the City Engineer, showing that:

[1] Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a non-preferred location; and

[2] The proposed facility will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area; and

(2) Preferred locations - Ground-level cabinets are preferred in non-residential zones provided that such ground-level cabinet:

- (a) Is less than 28 cubic feet in volume;
- (b) 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;
- (c) Does not inhibit any existing sight triangles or sight distance; and
- (d) Allows adequate room for the public to pass and repass across, along and through the municipal right-of-way.

E. Pole-mounted antennas are permitted on existing poles, provided that each pole-mounted antenna:

- (1) Does not exceed three cubic feet in volume; 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, along and through the public right-of-way.

F. Pole-mounted cabinets are permitted on existing poles in all residential zones and nonresidential zones provided that each pole-mounted cabinet:

- (1) Does not exceed 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.

§380-63 Application Process

- A. Pre-Application Meeting- Prior to making a formal application with the City for use of the Municipal Right-of-Way, all applicants shall meet with the City Engineer to review the scope of applicant's proposal.
- B. The City Council shall, by resolution, approve or disapprove every Right-of-Way Permit application based on the recommendations provided to it pursuant to the review conducted by the City Engineer.
- C. All applications made under this section which trigger Federal Communications Commission shot clock rules pursuant to the Federal Communications Commission Order titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wire line Broadband Deployment by the Removal of Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 17-84 shall be processed on an expedited basis.
- D. Every application made pursuant to this Chapter must include a stamped survey prepared by a New Jersey licensed surveyor demonstrating that any proposed Pole is located within the Municipal Right-of-Way. An application which does not include such a survey shall immediately be deemed incomplete.
- E. New Poles and Ground Level Cabinets
 - (1) The Planning Board shall, pursuant to N.J.S.A. 40:55D-25(B)(3), review applications for the placement of new Poles and Ground Level Cabinets within the Municipal Right-of-Way and advise the City Council of its recommendation to approve or disapprove same.
 - (a) If the Planning Board recommends a denial of an application, it shall set forth the factual basis for such a denial in writing.
- F. Pole Mounted Antenna and Pole Mounted Cabinets
 - (1) The City Engineer shall review application to place Pole Mounted Antenna and Pole Mounted Cabinets within the Municipal Right-of-Way and advise the City Council of his or her recommendation to approve or disapprove same.
- G. If the City Engineer recommends a denial of an application, he or she shall set forth the factual basis for such a denial in writing. If the City Council denies any application made under this Section, it shall do so in writing and set forth the factual basis therefore.

§380-64 Waiver

A. The City Council may waive any siting standard set forth in §380-62 where the applicant demonstrates that strict enforcement of said standard:

- (1) Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or
- (2) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- (3) Will violate any requirement set forth by the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket 17-84; or
- (4) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide Utility Service to any prospective customer within the City

§380-65 Right-of-Way Permit Fees and Deposit Towards Anticipated Municipal Expenses

A. Every Right-of-Way Permit application must include a Right-of-Way Permit Fee in the following amounts:

- (1) One (1) to five (5) sites- \$500.00
- (2) Each additional site- \$100.00

B. Deposit Towards Anticipated Municipal Expenses

- (1) In addition to the Right-of-Way Permit Fee, the City Engineer may, in his or her own discretion, require the posting of a two thousand dollar (\$2,000.00) Deposit Towards Anticipated Municipal Expenses related to an application made pursuant to this Chapter.
- (2) Applicant's Deposit Towards Anticipated Municipal Expenses shall be placed in an escrow account. If said deposit contains insufficient funds to enable the City to perform its review, the Chief Financial Officer of the City shall provide applicant a notice of insufficient balance. In order for review to continue, the applicant shall, within ten (10) days post a deposit to the account in an amount to be mutually agreed upon.

- (3) The Chief Financial Officer shall, upon request by the applicant, and after a final decision has been made by the City Council regarding his or her pending Right-Of-Way Permit application, refund any unused balance from applicant's Deposit Towards Anticipated Municipal Expenses.

§380-66 Miscellaneous Provisions

- A. Any approval received pursuant to this Chapter does not relieve the applicant from receiving consent from the owner of the land above which an applicant's facility may be located as may be required under New Jersey law.
- B. Applicant must, in addition to receiving a Right-of-Way Permit, also receive all necessary road opening permits, construction permits and any other requirement set forth in the Revised Ordinances of the City of Englewood or state statutes.
- C. The City's consent for use of County Roads, as required pursuant to N.J.S.A. 27: 16-6, shall take the form of a Right-of-Way Permit subject to the standards and application process set forth in this Chapter. No such applicant shall be required to enter into a Right-of-Way Agreement with the City.

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AN ORDINANCE AMENDING CHAPTER 380 STREETS AND SIDEWALKS OF THE CITY CODE OF THE CITY OF ENGLEWOOD TO ADD ARTICLE XI “TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

RECORD OF VOTE

FIRST READING DATE: February 21, 2023

COUNCIL	MOTION	VOTE
Cobb		Y
Maron		Y
Rosenzweig		Y
Wilson		Y
Wisotsky	X	Y

DATE PUBLISHED IN THE RECORD: February 27, 2023

DATES PUBLIC HEARINGS HELD: March 8, 2023

DATE SECOND READING HELD: March 8, 2023

COUNCIL	MOTION	OPEN	MOTION	CLOSE	MOTION	ADOPT
Cobb		AB		AB		AB
Maron		Y		Y		Y
Rosenzweig	X	Y	X	Y	X	Y
Wilson		Y		Y		Y
Wisotsky		Y		Y		Y

Y=YES N=OPPOSED A=ABSTAINED AB=ABSENT

PRESENTED TO MAYOR: March 9, 2023

APPROVED _____

REJECTED _____ (VETO)

DATE SIGNED: _____

MAYOR MICHAEL WILDES

I do hereby certify that the foregoing is a true and exact copy of an Ordinance adopted and approved by the Mayor and Council of the City of Englewood.

Yancy Wazirmas, RMC
City Clerk