

**BOROUGH OF HILLSDALE**  
**ORDINANCE NO. 23-13**  
**(Adoption)**

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**ORDINANCE OF THE BOROUGH OF HILLSDALE, COUNTY OF  
BERGEN, STATE OF NEW JERSEY ESTABLISHING PROCEDURES  
AND STANDARDS REGARDING DEPLOYMENT OF SMALL  
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY IN THE  
BOROUGH**

**WHEREAS**, the wireless telecommunications industry has expressed interest in submitting applications to utilize space in public rights-of-way within the Borough of Hillsdale (hereinafter "Borough") for the installation of small cell wireless telecommunications facilities (hereinafter "Small Wireless Facilities") in connection with the industry's efforts to expand and/or upgrade existing 4G services and as part of the construction of a nation-wide 5G network; and

**WHEREAS**, the Borough encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities and/or Smart Poles while preserving the Borough's ability to manage public rights-of-way in the overall interests of the public health, safety and welfare; and

**WHEREAS**, the Borough recognizes that as usage of wireless technologies continues to rapidly increase, Small Wireless Facilities and/or Smart Poles will be critical to delivering wireless access to advanced technologies, broadband services and 911 services to residences, businesses, schools and individuals within the Borough; and

**WHEREAS**, the Borough recognizes that Small Wireless Facilities and/or Smart Poles often are deployed in public rights-of-way; and

**WHEREAS**, multiple installations of Small Wireless Facilities and/or Smart Poles within the public right-of-way can impact property values, create traffic and pedestrian safety hazards, impact shade trees and create visual and aesthetic blight which can negatively impact the quality and character of life within the Borough; and

**WHEREAS**, the Borough wishes to preserve the aesthetics of the community by encouraging the location of 5G equipment on existing or previously approved concealment infrastructure; and

**WHEREAS**, a September, 2018 Ruling and Order of the Federal Communications Commission ("FCC") provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works and fees when dealing with Small Wireless Facility installation siting applications by the effective date of the Order which was January 14, 2019. The Order also includes modifications to "shot clocks" which require local governments to approve or deny applications within expedited periods of time; and

**WHEREAS**, the Borough needs to amend its ordinances to address the legal and practical issues that arise in connection with multiple Small Wireless Facility and/or Smart Poles installations deployed in the public rights-of-way; and

**NOW, THEREFORE, BE IT ORDAINED** by the Members of Council of the Governing Body of the Borough of Hillsdale, County of Bergen, State of New Jersey, as follows:

**Section One. Definitions.**

- A. All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.
- B. All definitions of the words, terms and phrases that are set forth in the portion of the Middle-Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 USC §455, are incorporated herein and are made a part hereof.
- C. All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et. seq.*, are incorporated herein and are made apart hereof.
- D. All of the definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 C.F.R. §1.6002, as amended, are incorporated herein and are made a part hereof.
- E. In addition to the foregoing, the following words, terms and phrases shall have the meanings indicated unless an alternate meaning clearly is discernable from the context in which the word, term or phrase is used:

***Personal Wireless Services***

"Personal Wireless Services," as defined in 47 U.S.C. §332(c)(7)(C), as supplemented and/or as amended.

***Public Right-of-Way***

The surface, the airspace above the surface and the area below or along the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and area for utilities owned by the Borough of Hillsdale within an easement to the public or other easement owned by the Borough of Hillsdale.

***Small Wireless Facility***

"Small Wireless Facility," as defined in the Code of Federal Regulations at 47 C.F.R. §1.6002(1), as supplemented and/or as amended. **Small wireless facility** means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure not to exceed Forty-Five (45) feet in height and be no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and (ii) all other

wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty-five (25) cubic feet in volume and not exceed Forty-Five (45) feet in height. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

***Smart Pole***

A decorative utility pole that conceals, disguises or camouflages one or more Small Wireless Facility installation(s) and may include other features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for multiple occupants and allow space for municipal use for other services and/or equipment. Smart Poles shall neither have external latches, external hinges, nor external cabling. The pole should be made of an inherently rust-resistant material (ie. aluminum alloys or stainless steel) and not exceed Forty-Five (45) feet in height.

***Utility Pole***

A wooden or metal pole that is used by public utilities to support electrical wires, telephone wires, coaxial cables, fiber optic cables and like and similar appurtenances.

- F. In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined herein then that term, word or phrase shall have its common, ordinary meaning.

**Section Two. Small Wireless Facility Siting Permit Required; Consent to Use Rights-of-Way Required.**

- A. No person shall place a Small Wireless Facility and/or Smart Pole in any right-of-way without first filing a Small Wireless Facility siting permit application, in the form and in accordance with the procedures specified herein, with the Borough Clerk and obtaining a siting permit, except as otherwise may be provided in this ordinance. Upon approval of a siting permit application, the siting permit authorizing placement of a Small Wireless Facility and/or Smart Pole in a public right-of-way shall not be issued by the Borough Clerk unless:
  - 1. All siting permit application fees and escrow fees, as established herein, have been paid; and
  - 2. All other governmental permits or other governmental approvals that are required for the deployment(s) proposed by the Applicant's siting permit application under the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-119, et. seq., and the administrative regulations adopted thereunder, Chapter 382, Article V, Street Openings, of the Code of the Borough of Hillsdale, and by any other applicable federal, state or municipal law have been issued by the appropriate issuing authority therefore to the Applicant and the Applicant has supplied copies of such other permits or approvals to the Borough

Clerk for inclusion with the Applicant's application documents; and

3. The Applicant has entered into a "Right-of-Way Use Agreement," the approved form of which is set forth in Appendix "A" to this ordinance, with the Borough. The approved form of "Right-of-Way Use Agreement" may from time-to-time be revised, supplemented or otherwise amended or replaced. All such revisions, supplements, amendments or replacements shall be approved by Resolution of Borough Council. The Borough Clerk shall maintain on file the currently approved Right-of-Way Use Agreement version and shall provide a copy to all siting permit applicants. Minor deviations to the terms and conditions that are set forth in the approved form of Right-of-Way Use Agreement may be approved by Borough Council at the time that it grants consent to use a right-of-way to a siting permit Applicant.

- B. No siting permit authorizing placement of a Small Wireless Facility and/or Smart Pole in a public right-of-way shall be issued to any Applicant unless Borough Council, in the manner prescribed by applicable laws of the State of New Jersey, has granted to the siting permit Applicant its consent to use public rights-of-way within the Borough. No siting of a Small Wireless Facility and/or Smart Pole shall be permitted within two-hundred (200) feet of another Small Wireless Facility and/or Smart Pole unless it can be established by clear and convincing evidence that co-location on an existing or previously approved Small Wireless Facility and/or Smart Pole is not feasible. Any claims of carriers of technical incompatibility or inability to collocate need to be proven by the carrier. Responsibility for judging proof of said claims lies solely with the Borough and/or its chosen representative(s).

### **Section Three. Installation of New Structures; Installation on Existing Structures.**

- A. No application for a Small Wireless Facility and/or Smart Pole siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility upon an existing structure in a right-of-way unless the structure is one of the types of Smart Poles that are set forth in Section One: Definitions to this ordinance and such Smart Pole specifically is designed to accommodate the reasonable and customary equipment necessary for a Small Wireless Facility installation which will accommodate at least three carriers per Small Wireless Facility deployment. Any exception to this requirement must be accompanied by clear and convincing evidence that co-location on an existing or previously approved Small Wireless Facility is not feasible. Any claims of carriers of technical incompatibility or inability to collocate need to be proven by the carrier. Responsibility for judging proof of said claims lies solely with the Borough and/or its chosen representative(s).
- B. No Small Wireless Facility shall be installed upon any new structure within any right-of-way unless the new structure is one of the pre-approved types of Smart Poles that are identified in Section One: Definitions to this ordinance. A replacement pole is a new structure.



- C. No application for a Small Wireless Facility and/or Smart Pole siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the City's Wireless Siting Plan, which can be found on file with the Office of the City Clerk. All Small Wireless Facilities must be placed within a 25 ft. radius of those specific locations set forth on the City's Wireless Siting Plan. No more than one (1) Smart Pole shall be permitted per intersection or block if the Siting Plan calls for the deployment of a Small Wireless Facility at any location other than an intersection, unless otherwise specified within the Wireless Siting Plan. No Smart Pole shall be located within 200 ft. of any other Smart Pole.

#### **Section Four. Siting Permit Application Process.**

- A. Application Filing. An application for a siting permit to place one or more Small Wireless Facility and/or Smart Pole within a right-of-way shall be made on forms which shall be available from the Office of the Borough Clerk. The application, along with the required application fee and the required escrow fee, shall be filed with the Borough Clerk. Immediately upon receipt of an application, the Borough Clerk shall provide copies of the application and all supporting documents that were submitted by the Applicant with the application, to the Borough Engineer, the Construction Official and the Borough Solicitor.
- B. Application Form. The Small Wireless Facility and/or Smart Pole siting permit application shall be made by a provider of personal wireless services, or its duly authorized representative as noted in a notarized statement from the provider of personal wireless services on whose behalf the representative is acting, and shall contain the following:
1. The Applicant's name, address, telephone number and e-mail address;
  2. 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;
  3. A general description of the proposed Small Wireless Facility, existing structure and new structure work to be performed. Color photographs shall be provided depicting the current state of the location where the installation is proposed. Additionally, rendering of the proposed installation shall be provided for each location the Small Wireless Facility is proposed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with particular emphasis on those matters, including, but not limited to, subservice utilities likely to be affected or impacted by the work proposed along with a description of such other governmental permits or approvals as may be required by applicable law with respect to the proposed installation(s) and a description of such other permits or approvals for which the Applicant has applied;
  4. Authorization for any consultant acting on behalf of the Applicant to speak with the Borough, or a designee of the Borough, on the area of consultation

for the Applicant even if the Applicant cannot be available;

5. Verification from an appropriate professional that the Small Wireless Facility shall comply with all applicable federal, state and local laws, administrative regulations and codes;
  6. The Applicant shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Applicant shall further certify that they will encourage, manage and coordinate the location and placement of any interested carrier's equipment on their structure.
- C. An Applicant seeking to deploy a network of Small Wireless Facilities, all of which are to be located in rights-of-way, may file a batched application for up to twenty-five (25) Small Wireless Facilities and receive a single siting permit for multiple Small Wireless Facilities.

**Section Five. Procedure on Permit Application; No Exclusive Rights.**

- A. The Borough shall review the application for a Small Wireless Facility and/or Smart Pole siting permit in light of its conformity with the provisions of this Ordinance, and shall approve a siting permit on nondiscriminatory terms and conditions subject to the following requirements:
1. Within ten (10) days of receiving an Application, the Borough Clerk shall determine and notify the Applicant:
    - (a) Whether the Application is complete;
    - (b) If the Application is incomplete, what specific information is missing; and
    - (c) Whether the deployment of the Small Wireless Facilities as proposed requires the Applicant to apply for other permits, such as a street opening permit or construction permit, for which the Applicant has not yet applied. No Small Wireless Facility siting permit application shall be deemed complete until the Applicant has applied for all other permits and approvals required by all other laws and regulations that are applicable to the Applicant's proposed Small Wireless Facility deployment.
- B. The Borough shall make its final decision to approve or deny the Application within the following timeframes:
1. Sixty (60) days from the submission of a complete application to install a Small Wireless Facility upon one or more existing structures.
  2. Ninety (90) days from the submission of a complete application to install a Small Wireless Facility upon one or more new structures.

3. Ninety (90) days from the submission of a complete batched application to install Small Wireless Facilities upon both existing and new structures.

The timeframes described above by which an application shall be either approved or denied may be extended by mutual consent of the Applicant and Borough. Such consent shall be set forth on a form for such purposes which shall be available from the Office of the Borough Clerk. Such consent on behalf of the Borough shall be exercised by the Mayor which shall not be reasonably withheld.

- C. The Borough Clerk shall notify the Applicant in writing of the final decision, and if the Application is denied Specify the basis for denial; and Cite such specific provisions, as may be recommended by the Borough Solicitor, from federal, state, or local laws, administrative regulations or codes as to why the Application was denied.
- D. Notwithstanding an initial denial, the Applicant may cure any deficiencies identified by the Borough within thirty (30) days of the denial without paying an additional application fee, provided the Borough Clerk shall approve or deny the revised application within thirty (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial.
- E. If the Borough fails to act upon an application within the timeframes prescribed by this section, the Applicant may provide written notice to the Borough that the application review and decision period has lapsed. Upon receipt of such notice, Borough Council, by resolution adopted no later than its second regularly scheduled public meeting next following receipt of the notice, shall either deny the application or direct that the siting permit shall be approved and issued. Nothing in this paragraph is intended in any way to impact any other right or remedy that may be available to the Applicant under applicable federal or state law if the Borough fails to act upon an application within the timeframes prescribed by this section.
- F. A siting permit from the Borough authorizes an Applicant to undertake only certain activities in accordance with this ordinance. No approval or consent granted, or siting permit issued, pursuant to this ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use any public right-of-way within the Borough for the delivery of telecommunications services or for any other purpose.

#### **Section Six. Duration.**

No siting permit issued under this ordinance shall be valid for a period longer than twelve (12) months unless construction has actually begun and continuously and diligently is pursued to completion. Upon written request from the Applicant, the Mayor, upon consultation with the Construction Official, may extend the siting permit for a period of up to twelve (12) months so long as construction has begun at the time that the Applicant's request for an extension is made.

## **Section Seven. Routine Maintenance and Replacement.**

A Small Wireless Facility siting permit shall not be required for:

- A. Routine maintenance of a Small Wireless Facility and/or Smart Pole.
- B. The replacement of a Small Wireless Facility and/or Smart Pole with another Small Wireless Facility and/or Smart Pole that is substantially similar or smaller in size, weight and height to the Small Wireless Facility that is being replaced.
- C. Provided, however, that on a location where the Borough and/or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written authorization from the Borough and/or the other provider, as the case may be, to proceed is provided to the Borough, which authorization to proceed shall not unreasonably be withheld by the Borough and/or the other provider.
- D. Provided further that if the replacement of a Small Wireless Facility and/or Smart Pole with another Small Wireless Facility includes replacement of the structure to which the Small Wireless Facility and/or Smart Pole is attached then an application for a siting permit shall be required.

## **Section Eight. Fees.**

- A. **Application Fees.** All applications for approval and issuance of a Small Wireless Facility and/or Smart Pole siting permit pursuant to this ordinance shall be accompanied by a fee as follows:
  - 1. For applications that do not include the installation of any new structures within a right-of-way the application fee shall be \$500.00 for up to five (5) Small Wireless Facilities and/or Smart Pole with an additional \$100.00 for each Small Wireless Facility and/ or Smart Pole beyond five (5).
  - 2. For applications that include the installation of a new structure within a right-of-way the application fee shall be \$1000.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).
- B. **Other Fees:** No pole attachment fees will be assessed by the City unless and until an applicant applies for pole attachment to a City-owned pole
- C. **Annual Rate:** Applicant/permit holder shall pay a \$270 Annual ROW Maintenance Rate per Small Wireless Facility, starting on the anniversary of the permit issuance.

## **Section Nine. Escrow Fee for Third-Party Professionals and Consultants.**

- A. In addition to the application fee, all applications for approval and issuance of a Small Wireless Facility and/or Smart Pole siting permit shall be accompanied by an escrow fee as follows:

1. For applications whose proposed Small Wireless Facility and/or Smart Pole deployment(s) will not require a street opening permit pursuant to Chapter 382, Article V of the Code of the Borough of Hillsdale: \$5,000.00.
  2. For applications whose proposed Small Wireless Facility and/or Smart Pole deployment(s) will require a street opening permit of the Code of the Borough of Hillsdale: \$7,500.00.
- B. The escrow account deposits are required to pay for the costs of professional services, including engineering, planning, legal and other third-party professional consulting expenses connected with the review of submitted materials, including any traffic engineering review or other special analyses related to the Borough's review of the materials submitted by the Applicant and the preparation of any reports or any necessary legal agreement regarding rights-of-way use. An Applicant is required to reimburse the Borough for all fees, costs and expenses of third-party professionals and consultants incurred and paid by the Borough for the review process of a Small Wireless Facility and/or Smart Pole siting permit application, such as, but not limited to:
1. Professional fees for reviews by third-party professionals or consultants of applications, plans and accompanying documents;
  2. Issuance of reports or analyses by third-party professionals or consultants to the Borough setting forth recommendations resulting from the review of any documents submitted by the Applicant;
  3. Charges for any telephone conference(s) or meeting(s), including travel expenses, requested or initiated by the Applicant, the Applicant's attorney or any of the Applicant's experts or representatives;
  4. Review of additional documents submitted by the Applicant and issuance of reports or analyses relating thereto;
  5. Review or preparation of right-of-way use agreements, easements, deeds, right-of-way municipal consent ordinances or resolutions and any and all other like or similar documents; and
  6. Preparation for and attendance at all meetings by third-party professionals or consultants serving the Borough, such as the Borough Attorney, Borough Engineer and Borough Planner or other experts as required.
- C. The escrow account deposits shall be placed in a separate account by the Borough's Chief Financial Officer at the request of the Borough Clerk and an accounting shall be kept of each Applicant's deposit. Thereafter:
1. All third-party professional or consultant fees, costs, expenses and charges shall be paid from the escrow account and charged to the

applicant; Third-party professional or consultant fees shall not be disbursed from escrow if they are for a service performed in the context of an identical paid service between applicant and same third-party who may otherwise be entitled to said fees.

2. Upon either final denial of a Small Wireless Facility and/or Smart Pole siting permit application or upon issuance of a Small Wireless Facility and/or Smart Pole siting permit, any moneys not expended for third-party professional or consulting services shall be returned to the Applicant within 90 days upon written request by the Applicant and as authorized by the Borough Council;
3. If at any time during the application review process 75% of the money originally posted shall have been expended, the Applicant shall be required to replenish the escrow deposit to 100% of the amount originally deposited by the Applicant;
4. No Small Wireless Facility and/or Smart Pole siting permit application shall be considered complete until such time as the required escrow fee has been posted to guarantee payment of third-party professional or consultant fees, costs, expenses and charges;
5. All payments charged to the escrow deposit shall be pursuant to vouchers from the third-party professionals or consultants stating the hours spent, the hourly rate and the fees, costs, expenses and charges incurred;
6. Third-party professionals and consultants submitting charges pursuant to this section shall be permitted to charge for such services at the same rates as they would charge their private clients for like or similar work provided that:
  - (a) Professional fees are billed at rates that do not exceed such professional fees as are customarily charged by other like professionals and consultants performing similar work within Bergen County; and
  - (b) Out-of-pocket costs, expenses and charges are billed on a dollar-for-dollar basis with no mark-up being permitted;
7. The Borough shall render a written final accounting to the Applicant on the uses to which the escrow deposit was put. The written final accounting shall include copies of all vouchers that were submitted by third-party professionals and consultants and paid by the Borough.

#### **Section Ten. Municipal Access to New Structures.**

An Applicant whose siting permit includes the installation of any new Smart Pole structure of any of the types that are defined in in Section One: Definitions to this ordinance shall

provide the Borough with access to any of the technological features that are a component the new Smart Pole structure such as, for example, public access Wi-Fi, 911 call service or security cameras, before the Applicant offers such access to any other person or entity. Should the Borough decide to utilize any such technological features then the Borough, on an annual basis, shall reimburse the Applicant or the subsequent owner of the structure, the costs, on a dollar-for-dollar basis, of providing the Borough with such access. Such costs shall be limited to the costs of providing electricity to the components used by the Borough and the costs of any repairs required to be made to the components used by the Borough, unless the repair costs are necessitated by the acts of the Applicant or subsequent owner of the structure, without regard to whether such acts are negligent or intentional.

**Section Eleven.**

All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed. The Borough shall not be under any obligation to defend any challenges, in whole or in part, made to the within ordinance and is not responsible in any way if the ordinance is challenged or invalidated.

**Section Twelve.**

This Ordinance shall take effective immediately upon final passage and publication as provided by law.

If any section, paragraph, sub-section, clause or provision of this ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any part thereof.

All ordinances or parts of ordinances of the Borough heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

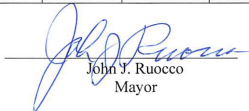
This Ordinance shall take effect upon passage and publication as provided by Law.

Council member	Motion	Second	Yes	No	Absent	Abstain	Recuse
DeRosa, Anthony			X				
Escobar, John			X				
Fox, Justin			X				
Horvath, Zoltan			X				
Lundy, Abby	X		X				
Trochimiuk, Janetta		X	X				
Ruocco, John			X				

Adoption: July 11, 2023

Attest:

  
 Denise Kohan  
 Municipal Clerk

  
 John J. Ruocco  
 Mayor