

ORD. NO. 65-25

FIRST READING: May 18, 2021

SECOND AND FINAL READING: June 15, 2021

CITY OF LINDEN SMALL CELL WIRELESS ORDINANCE

AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF CHAPTER 31 ZONING REGULATIONS OF THE REVISED GENERAL ORDINANCES OF THE CITY OF LINDEN WITH THE ADDITION OF A NEW SECTION ENTITLED “TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

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

WHEREAS, the City 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 Wireless Facilities” by accessing rights-of-ways within municipalities; and

WHEREAS, it is “axiomatic that municipal corporations are required to exercise ordinary care to maintain their streets and sidewalks . . . [n]or may a municipality in any way surrender or impair its control over the streets”, McQuillan Mun. Corp., (3rd Ed.), Section 30.73; and

WHEREAS, the City Council acknowledges that its streets “are used for the ordinary purposes of travel and such other uses as customarily pertain thereto which, in recent years, are numerous and various. It thus follows that these public ways must be kept free from obstruction, nuisances, or unreasonable encroachments which destroy, in whole or in part, or materially impair, their use as public thoroughfares, ” McQuillan Mun. Corp., (3rd Ed.), Section 30.73; and

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

WHEREAS, in keeping with the general purposes of the Linden zoning ordinance, the City has determined that it requires an ordinance to regulate small cell facilities in the public right-of-way in order to provide for the appropriate use and development of all lands in the City, to provide for adequate light, air and open space, including appropriate locations for residential, commercial and industrial uses, to provide for the general welfare of the public and to ensure harmonious development within the City; and

WHEREAS, the current antenna code, Section 31-28 Wireless 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 right-of-way; and

WHEREAS, while the City acknowledges that there are already existing a number of small cell facilities in the public right-of-way that were approved under terms and conditions that would not be in compliance with this proposed ordinance; and

WHEREAS, upon adoption, this ordinance will govern all telecommunications providers and facilities in a non-discriminatory manner, and will not have the effect of prohibiting service or causing a material inhibition to the provision of wireless service; and

WHEREAS, the Federal Telecommunications Act (“TCA”) preserves 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);

WHEREAS, the TCA preserves local government’s authority over the, “placement, construction and modification of personal wireless service facilities”, and makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. 47 U.S.C. 332(c)(7)(A), and provides that municipalities “shall not unreasonably discriminate among providers of functionally equivalent services”, 47 U.S.C. 332(c)(7)(B)(i)(II); and

WHEREAS, New Jersey municipalities must give consent before Small Wireless Facilities can be placed on existing poles within the public Rights-of-Way pursuant to N.J.S.A. 48:3-19 and for the erection of new poles within the public Rights-of-Way; and

WHEREAS, the TCA 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 Federal Communications Commission (“FCC”) adopted an Order entitled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,” at WT Docket No. 17-79, a/ka “FCC-18-133A” or “Carr’s Order”, which establishes safe harbors for fees that municipalities can request pursuant to 47 U.S.C. 253(c), and 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, FCC-18-133A establishes safe harbors for the fees which a municipality may charge for one-time event application processing and recurring fees for right-of-way access, and below which, no municipality will be presumed to effectively prohibit the provision of wireless services, per 47 U.S.C. 253(c). One-time fees and recurring fees, or rates, above the safe harbor levels are not considered an effective prohibition of service if they are a reasonable approximation of actual costs, and if the costs themselves are objectively reasonable, and they are non-discriminatory; and

WHEREAS, a recurring fee of \$270 per site per annum is presumed reasonable and not an effective prohibition of service. A one-time fee of \$1000 per new utility pole is presumed reasonable and not an effective prohibition of service; and

WHEREAS, on August 12th, 2020, the Ninth Circuit Court of Appeals upheld most of the substantive provisions of FCC-18-133A with the exception of the provisions related to aesthetics, which it remanded to the FCC for further consideration and revision; and

WHEREAS, the Ninth Circuit interpreted the safe harbor for one-time fees per small cell site application to be \$500. Small cell application fees at or below this level are presumed reasonable and not an effective prohibition of service; and

WHEREAS, the erection of New Poles and Ground Level Cabinets in the Public Right-of-Way raises significant aesthetic and safety concerns; and

WHEREAS, FCC-18-133A provides that municipalities can impose aesthetic requirements on Small Cells where said requirements are: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployment; and (3) published in advance; and

WHEREAS, the FCC in its recent Order further clarified what it considers “reasonable” aesthetic requirements by stating that “in assessing that this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment”; and

WHEREAS, the FCC’s requirement that, in order to protect the aesthetics of the City’s Municipal Right-of-Way, it must treat like infrastructure in a like manner, necessitates the introduction of broader aesthetic requirements that apply to all Poles and Antennas and Cabinets in the Municipal Right-of-Way and not just Small Cells; and

WHEREAS, notwithstanding the foregoing, the Ninth Circuit Court of Appeals did not uphold the provisions of FCC-18-133A related to aesthetics, remanding them to the FCC for further consideration and revision; and

WHEREAS, the City has determined, for the benefit of its citizens as well as utilities and other parties that utilize the Public Right-of-Way, that the most efficient way to handle this process is to create a right-of-way approval and permitting system with clear standards for the placement, installation, maintenance and modification of Small Wireless Facilities, Poles, Cabinets and Antennas, and other wireless equipment in the Public Right-of-Way; and

WHEREAS, in addition, Ground Level Wireless Cabinets trigger certain collocation requirements pursuant to Section 6409(a) of the Middle Class Tax Relief and Jobs Creation Act of 2012 which raises concerns as to the ability of local government to protect the public’s interest in the City’s rights-of-way when it comes to aesthetics and the ability of the public to pass and repass over same and for the safety of pedestrians and drivers through the blocking of sight triangles; and

WHEREAS, New Poles and Ground Level Wireless Cabinets erected in the Public Rights-of-Way raise concerns related to sight triangles and other safety related issues and aesthetic concerns associated with the use of roadways by the public, including but not limited to the public’s ability to pass and repass over same and the impact on the streetscape and character of residential neighborhoods; and

WHEREAS, this Ordinance is limited to the installation of facilities in the public right-of-way and shall have no effect on the installation of wireless telecommunications facilities and antennas on private lands pursuant to Zoning Section 31-28 Wireless 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 City of Linden has adopted Hoplite Communications, LLC, (“Hoplite”) as its wireless consulting specialist due to the peculiar and technical nature of wireless communications being outside the scope and expertise of City personnel. Hoplite shall be the City representative and initial point of contact for all matters concerning this section. Applicants shall make initial contact with Hoplite for all applications for all required permits and approvals regarding the installation, repair, maintenance and upgrade of Small Wireless Facilities; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Linden in the County of Union and State of New Jersey, as follows:

Section 1

Chapter 31 Zoning of the Revised General Ordinances of the City of Linden is hereby amended, supplemented and revised with the addition of a new article entitled “Section 31-50 Telecommunications Facilities in the Public Right-of-Way”, which shall read, in its entirety, as follows:

Heading: SECTION 31-50 – TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Section 31-50

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Article I. Short Title, Purpose and Definitions

Section 1.1 Short Title.

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

Section 1.2 Purpose.

It is the intent of this subsection of Chapter 31 Zoning of the Revised General Ordinances 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 31 Zoning Section 31-28 Wireless Telecommunications Towers and Antennas.

Section 1.3 Definitions.

- a. “Administrative Review” means ministerial review of an Application by the City relating to the review and issuance of a Permit, including review by the Construction Official, Zoning Officer, Director of Public Works, wireless consultants with knowledge beyond the expertise of City personnel, or other City staff or designees to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter. Administrative permit issuance is non-discretionary and based on whether an application is in conformity with the provisions of this Article, 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 City or otherwise are applicable in the jurisdiction.
- d. “Applicant” means a Person who submits an Application under this Article.
- e. “Application” means a written request submitted by an Applicant to the City 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. “City” means the City of Linden, 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 City or any entities that do not have zoning or permitting authority or jurisdiction. The City may hereinafter be referred to as the “City”, “the City of Linden”, “Linden” or “the City”.
- g. “City Pole” means a Pole owned, managed or operated by or on behalf of the City.
- 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 City 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 City 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 City (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.
- n. “Eligible Facilities Request” means an eligible facilities request as set forth in 47 C.F.R. Section 1.40001(b)(3), as may be amended from time to time.
- o. “FCC” means the Federal Communications Commission of the United States.

- p. “Fee” means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.
- q. “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.
- r. “Laws” means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- s. “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 City (and/or consistent with the same height and volume limits for Wireless facilities under this Chapter), 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 City, 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 approval by the City.
- t. “Permit” means a written authorization (in electronic or hard copy format) required by the City to initiate, continue, or complete installation of a Communications Facility, or an associated Support Structure, Pole, or Tower.
- u. “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- v. “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 City 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.
- w. “Provider” means a Communications Service Provider or a Wireless Provider.
- x. “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.
- y. “Rate” means a recurring charge.
- z. “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 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 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. 1.40001 Subpart b(7).

- aa. “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.
- bb. “State” means the State of New Jersey.
- cc. “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.
- dd. “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.
- ee. “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.
- ff. “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.
- gg. “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.
- hh. “Wireless Provider” means a Wireless Infrastructure Provider or a Wireless Services Provider.
- ii. “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.
- jj. “Wireless Services Provider” means a Person who provides Wireless Services.

Article II. Governance of Deployment in the Public ROW

Section 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 Article.
- b. Notice Prior to Any Work.

- i. Hoplite Communications, LLC, (“Hoplite”) has been adopted by resolution by the City as the wireless telecommunications consultant.
 - ii. Hoplite will be the primary point of contact for the City for all matters pertaining to this Article.
 - iii. No action, application, installation, upgrade, maintenance, repair, replacement or, modifications by Applicant contemplated by this Article shall be commenced without first giving notice to Hoplite.
 - iv. 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 City 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. The Applicant will pay the following Fees and Rates, as consideration to the City for the Municipal Agreement and also as a condition precedent for the issuance of a permit or permits to install the applicable Communications Facilities in the public right-of-way:
 - A. Application or One-Time Fees. Applications submitted by a Wireless Provider or any other Communications Service Provider to the City shall be paid upon submission of the Application and will include the following:
 - (a) Construction Permit (including building and electrical subcodes, and any other applicable codes or subcodes), per statutory fees established by uniform construction code regulations contained in N.J.A.C. 5:23.
 - (b) Zoning Permit, if applicable, per City zoning ordinance and the provisions of this Article.
 - (c) Street Opening Permit, if applicable, per City code Chapter 15 Streets and Sidewalks and the provisions of this Article.
 - (d) Telecommunications Consultation and Review performed by Hoplite Communications, LLC, at the rate of \$350/hour, not to exceed 3 hours per site, and to include permit review, construction oversight for code and zoning compliance and post-installation inspection to ensure compliance with applicable land use and legal requirements, said fees representing a reasonable approximation of the objectively reasonable costs associated with said review and inspection of the proposed Communications Facility and all associated permits, documentation and applications thereof.
 - (e) Engineering Review by an outside consultant, as needed, at a rate determined by the City and the engineer
 - (f) City Presence: Applicant will be responsible for any one-time fees associated with the City Department of Public Works and police department presence during the installation, modification, repair and upgrade of Communications Facilities, including for necessary street closures, traffic diversion and other protocols and measures necessary to ensure the safety of the Public Right-of-Way during any proposed work. Such fees shall be assessed according to customary pay scales charged to other companies for similar scopes of work in the Public Right-of-Way.

- (g) Reasonable Approximation: All one-time event fees will be a reasonable approximation of objectively reasonable costs.
- (h) 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, repair, replacement, modification or alteration of same.
- (i) Separate and Distinct from Rates: One-time fees for subsequent upgrade, repair, maintenance, replacement, or modification of Small Wireless Facilities are separate and distinct from the recurring access and attachment Rates described in section 2.1(c)(i)(B),(C) of this Article.
- (j) Not Exhaustive: The aforementioned subsections (a) through (j) is not intended to be a complete list of potential one-time fees. Additional one-time fees may be required and shall be a reasonable approximation of objectively reasonable costs.

- B. Annual ROW Occupancy Rate, for non-exclusive occupancy of the Public ROW by the Applicant, \$270 shall be paid for each Small Wireless Facility site 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 City and Applicant.
- C. Annual Attachment Rate, equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the City for the attachment of each Small Wireless Facility to City-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.
- D. Generally Applicable Fees, such as those required for electrical Permits, building Permits, or street opening Permits, shall be paid by Applicant as required in the applicable provisions of the Revised General Ordinances of the City.
- E. All Fees and Rates will be applied in a non-discriminatory manner to all Telecommunications Providers.
- F. The Applicant, or person who owns or operates the Communications Facility installed in the Public ROW (including, without limitation, on the City Pole) may remove its facilities at any time from the Public ROW, upon not less than thirty (30) days prior written notice to the City and may cease paying to the City any applicable Fees and Rates for such use, as of the date of actual removal of the facilities.
- G. Make-Ready Fee, shall be determined on a site-specific, engineering basis, for work reasonably necessary to make a particular City 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(g) below.

d. Other Terms.

- i. Term. Unless otherwise agreed to in writing by the City 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. 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. Mapping data shall be provided for the City and in the format requested by the City engineer for inclusion in the mapping system used by the City engineer.
- iv. RF Safety Reports. Applicant shall provide, within a week of request, a copy of a health and safety report evidencing compliance with FCC requirements concerning electromagnetic radiation emissions, and which will reflect the current configuration of the Small Wireless Facilities in question. After any modification, enhancement or addition to a Small Wireless Facility that modifies that facility's electromagnetic profile, Applicant will provide an updated health and safety report which reflect the most recent electromagnetic emissions levels.
- v. Indemnification and Insurance Requirements.

Insurance. The Applicant shall at all times maintain a comprehensive liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) 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 amount in the amount of Five Million Dollars (\$5,000,000.00). Prior to the commencement of any work pursuant to this Agreement, the Applicant shall file with the City, a Certificate(s) of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies. The City shall notify Applicant within fifteen (15) days after the presentation 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 sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Agreement.

Indemnification. Applicant, its successors, assigns, contractors, sub-contractors, 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 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. 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 City 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.

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

Section 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 City as set forth in Section 2.1(c) above, and Administrative Review and the issuance of a Permit as set forth in this Section 2.2. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 2.5 below.
 - (i) Collocation of a Small Wireless Facility or a Collocation that qualifies as an Eligible Facilities Request.
 - (ii) 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.
 - (iii) 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 Article.
 - (iv) 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.
 - (v) The City reserves and retains the right to subject any installation or modification contemplated in this section as well as in this Article to Discretionary Approval, 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 Approvals unless compelling and extraordinary circumstances suggest otherwise.
 - (vi) 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 31 Zoning, as described in Section 2.4 of this Article.
- b. Permit Required. No Person shall place any facility described in Subsection 2.2(a) above in the Public ROW without first filing an Application for same and obtaining a Permit thereof, except as otherwise expressly provided in this Article.
- c. Proprietary or Confidential Information in Application. The City shall make accepted Applications publicly available. 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 City shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” Laws and the City’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 or this Article, open and available for public inspection, including proposed Communications Facilities site location.
- 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) 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 further specified in codebook Chapter 31 Zoning and the Uniform Construction Code of the State of New Jersey.
 - (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 Section 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 duly licensed 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.
 - (viii) 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.
- e. Ordinary Maintenance, Repair and Replacement. Ordinary maintenance and repairs shall be subject to the provisions of Section 2.1(b) and (c) of this Article, including notification to Hoplite of any proposed work, repairs, replacement and modification. This will include coordination with the City DPW and Police Department for necessary street closures and safety protocols, as well as the payment of any required fees required under Section 2.1(a) above.
 - f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the City within thirty (30) days after the change necessitating the change.
 - g. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Article shall be accompanied by the Fees required under Subsection 2.1(a) above.

Section 2.3 Action on Administrative Review Applications

- a. Review of Applications for Administrative Review.
 - (i) The City shall review the Application in light of its conformity with applicable provisions of this Article, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:
 - A. Within thirty (30) days of receiving an Application, the City must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete. The City must specifically identify the missing information, and may toll the approval interval in Subsection 2.3(a)(i)(D) below. The Applicant may resubmit the completed Application and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the

extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the City) in which case a new Application and Application Fee for same must be submitted; and

B. If, within ten (10) days of receiving an Application, the City determines that said Application is incomplete and notifies the Applicant, then the sixty (60) or ninety (90) day approval interval the City has for making a final decision shall be reset upon submission by Applicant of a new Application containing the missing and incomplete information. The City will then have the full 60 or 90 day approval interval, as applicable, to render its final decision on the Application.

C. If, within more than ten (10) days but less than thirty (30) days of receiving an Application, the City determines that said Application is incomplete and notifies the Applicant, then the approval interval specified in section 2.3(a)(1)(D) below shall toll until the Applicant submits an Application containing the missing and incomplete information.

D. The City must make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete);

E. The City 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 City the zoning code 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 City. 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 City 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 City shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the City 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 shall comply with nondiscriminatory City 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 City 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 City (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.

c. Effect of Permit.

(i) Authority Granted; No Property Right or Other Interest Created. A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant City 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 Article II shall be valid for a period of six (6) months after issuance, provided that the six month period shall be extended for up to an additional 6 months upon written request of the Applicant (made prior to the end of the initial 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 City, 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 City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Public ROW. The City shall apply the same standards to all utilities in the Public ROW.

(ii) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut power to or move any Communications Facility located within the Public ROW of the City, as the City may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the City 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) Abandonment of Facilities. A Provider is required to notify the City of abandonment of any Communications Facility at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the City shall direct the Provider to remove all or any portion of the Communications Facility if the City determines that such removal will be in the best interest of the public safety and public welfare. If the Provider fails to remove the abandoned facility within sixty (60) days after such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the Provider, its successors and/or assigns.

(iv) Structural reconditioning, repair and replacement. From time to time, the City may paint, recondition, or otherwise improve or repair the City Poles in a substantial way ("Reconditioning Work"). The Provider shall reasonably

cooperate with the City to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider's approved use of the facility.

A. Prior to commencing Reconditioning Work, the City will use reasonable efforts to provide the Provider with at least one hundred twenty (120) 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 City reserves the right to require the Provider to remove all of the Provider's Communications Facility from the City 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. If the City fails in good faith to give notice of less than one hundred twenty (120) days notice, it will not affect the City's rights under this Subsection. In all cases, as much notice as possible should be provided, but in no case less than thirty (30) days notice shall be provided. The City will provide the Provider with a date by which its equipment must be protected or removed.

B. The Provider may request a modification of the City procedures for carrying out Reconditioning Work in order to reduce the interference with Provider's operation of its Communications Facility. If the City agrees to the modification, the Provider shall be responsible for all reasonable incremental cost related to the modification. If the City Poles need to be replaced ("Replacement Work"), the City shall provide Provider with at least one hundred twenty (120) days written notice to remove its Communications Facilities. The City shall also promptly notify Provider when the City 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 City, on any land owned or controlled by City, 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 City. If the City Poles need to be repaired due to storm or other damage ("Repair Work"), the City shall notify the Provider to remove its Communications Facilities as soon as possible. In the event of an emergency, the City shall contact the Provider by telephone at its emergency contact of record upon or prior to removing the Provider's equipment. Once the City Poles have been replaced or repaired, the City will promptly notify the Provider that it can reinstall its equipment. During City 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 City 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 City.

e. Attachment to City Poles in the Public ROW.

(i) Make-Ready. For any attachment to City Poles in the Public ROW, the City shall provide a good faith estimate for any make-ready work necessary to enable the City 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 City Pole. 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. Such acceptance

shall be signified by payment via check or other commercially reasonable and customary means specified by the City.

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, and issuance of a Permit under Section 31-28 Wireless Telecommunications Towers and Antennas and the district zoning regulations of the City.

Section 2.5 Other Public ROW Installation Requirements.

- a. General Principles.

- (i) The City shall have the power to establish reasonable and non-discriminatory 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 City 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) 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 Article, unless otherwise expressly exempted by the City.

- (iii) 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 City 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 City 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 Uniform Manual of Traffic Control Devices.

- (B) Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the City notifies the occupant in writing that the City or the City'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.

- (iv) 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) To minimize disruption of public passage or infrastructure, to forestall or relieve overcrowding of the Public ROW, or to protect Historic Property or environmentally sensitive areas, the City may require, as a condition of issuing any Permit for placement of underground facilities that the occupant place empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City's use. The occupant shall cooperate with the City in any such construction, provided that the City has first notified the occupant in writing that it is interested in sharing the trenches or bores in the area where the construction is occurring. The occupant shall allow the City to place its infrastructure in the occupant's trenches and bores as requested by the City, provided that the City incurs an incremental share of the costs of trenching, boring, and placing the conduit/infrastructure. The City shall be responsible for maintaining its facilities buried in the trenches and bores or otherwise placed in the Public ROW under this Subsection.
 - (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.
- (v) Relocation of Existing Facilities.
- (A) If relocation of facilities is required as a result of any public project, the City shall provide the greatest practical advance notice to the affected occupants of the Public ROW and shall facilitate the greatest reasonable project coordination among the affected occupants, whereas coordinated sequencing dependencies are common. Generally, projects of greater scale and scope will have a longer planning horizon, and commensurate notice.
 - (B) The objective of the relocation process recognizes the mutual obligations and responsibilities of the City and the Public ROW occupants to avoid or minimize service disruption and to timely and economically complete the public project. Public ROW occupants are obligated to proceed with diligent speed and attention so as to not unreasonably delay or complicate a public project.
 - (C) As general guidance, projects involving a public project of greater than \$100,000 dollars, or more than ten (10) utility poles, or more than one thousand (1000) frontage feet of public roadway would be smaller projects; and projects greater than any of the above would be larger projects. A reasonable, general expectation is that that smaller projects would provide ninety (90) days' notice, and larger projects would provide one hundred and eighty (180) days' notice to complete the relocation of the Public ROW occupants.
 - (D) Unless otherwise provided by applicable Laws, the occupant, at no cost to the City, shall accomplish the necessary relocation within a reasonable time from the date of the notification, but, in no event, no later than seven (7) days prior to the date the City has notified the occupant that it intends to commence its work which mechanically requires the occupant's relocation, or immediately in the case of emergencies. With as much notice as possible, but in no event less than one hundred and eighty (180) days following

written notice from the City, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility.

(E) Facility within the Public ROW whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance or installation of any City improvement in or upon, or the operations of the City in or upon, the Public ROW. The City will use its best efforts to accommodate the Provider's request for relocation of the Communications Facility.

(F) Except as provided in Section 2.5(a)(iv)(B), the City may not directly or indirectly require an Applicant to perform services unrelated to the Communications Facility or Support Structure for which approval is sought, such as in-kind contributions, except reserving fiber, conduit or pole space for the City. Notwithstanding the foregoing, an Applicant may offer in-kind contributions related to Communications Facility or Support Structure for which approval is sought, on a reasonable and nondiscriminatory basis, including by contributing the cash value of an in-kind contribution already provided by another party.

(vi) In the event of an emergency where any Communications Facility in the Public ROW creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of such Communications Facility, and charge the occupant for actual and reasonable costs incurred. The City shall engage the emergency contact information of record or best available, if possible, for prior notice, and if not possible because of emergent and imminent danger, shall notify the occupant promptly afterwards. Ten (10) days after notification as outlined in this Subsection, the City may remove any Communications Facilities that obstructs the progress of a public project. All costs associated with any removal or protection of Communications Equipment shall be the sole responsibility of the Provider.

(vii) Abandonment of Facilities.

(A) Any occupant of the Public ROW that intends to permanently discontinue use of any facilities within the Public ROW shall notify the City 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, the City 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 City. The occupant is responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the City 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 City requires it to remove, after ninety (90) days notice to the occupant, the City 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 City.
 - (C) Existing Public ROW occupancy or management ordinances, not otherwise inconsistent with this Article.
- (ii) 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:
1. Notification to Hoplite for all work contemplated in this Article, pursuant to Section 2.1
 2. Construction Permit (including building and electrical subcodes), per statutory fees established by uniform construction code regulations contained in N.J.A.C. 5:23.
 3. Zoning Permit, as applicable, per this Article and the City Chapter 31 zoning code.
 4. Street Opening Permit, if applicable, per City code Chapter 15 Streets and Sidewalks.
 5. Telecommunications Consultation and Review performed by Hoplite, to include permit review, construction oversight for code and zoning compliance and post-installation inspection to ensure compliance with the technical specifications.
 6. Engineering Review by an outside consultant, as needed
 7. Discretionary Approvals: For Small Wireless Facilities applications not subject to Administrative Review, pursuant to the general and district zoning provisions of Chapter 31 Zoning code
- (iii) Placement of facilities. The City engineer may assign specific corridors within the Public ROW, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology that the City engineer expects will someday be located within the Public ROW. All excavation, obstruction, or other Permits issued by the City engineer involving the installation or replacement of facilities shall designate the proper corridor for the facilities.
- c. Existing Utility Easements in the Public Right of Way.
- (i) Applicants will work with the City engineer to coordinate and protect existing utilities in the Public ROW.
 - (ii) Applicants will coordinate with the City 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 City disturbance.

Section 2.6 Attachment to and Replacement of Decorative Poles.

Notwithstanding anything to the contrary in this Article, the City 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:

- (i) Issuance of a Permit under Subsection 2.2(a) above.
- (ii) 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 City.

Section 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 City's approval, batch Application requirements and file a consolidated Application and receive multiple permits or a single Permit

for multiple Communications Facilities. The City's denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The City 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. An Applicant may submit simultaneously not more than five (5) separate Applications for a network of multiple Communications Facilities within adjacent, related geographic areas of the City.

Section 2.8 Design Standards.

All aboveground 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:

1. 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 fifty (50) 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:
 - i. Is approved pursuant to the provisions of this Article;
 - ii. Replaces an Existing Pole; or
 - iii. Any pole mounted antenna in installed on said New or Existing Pole is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility; and
 - iv. Does not inhibit any existing sight triangles or sight distances; and
 - v. Allows adequate room for the public to pass and re-pass across, along and through the Right-of-Way; and
 - vi. 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.
 - vii. Is compliant with Chapter 15 Streets and Sidewalks of the City Code 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.
2. 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.
3. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.
 4. 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. Is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility; and
 - d. Does not inhibit any sight triangles or sight distance; and
 - e. 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 non-residential zones provided that each pole mounted cabinet:
 - i. Does not exceed sixteen (16) cubic feet; and
 - ii. 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
 - iii. Does not inhibit any sight triangles or sight distance; and
 - iv. 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(aa) 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 Article, 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 Article; or ten (10) feet on utility distribution poles where required by the electrical utility separation requirements; or

2. the height limit under this Section 2.8(B)(i)(A)

Article III. Miscellaneous Terms

Section 3.1 Preexisting Sites and Municipal Agreements.

Any Communications Facilities, including Small Wireless Facilities, in the Public Right-of-Way and for which the appropriate municipal approval or permit has been issued prior to the adoption of this Article shall not be required to meet the requirements of this Article, unless said Preexisting Site is altered, modified, repaired, maintained, or upgraded in any manner, or if the design or configuration of such Preexisting Site differs from that which is depicted on the approved plans and permits issued by the City, then said Preexisting Site shall be required to conform to the provisions of this Article.

Applicants who have entered into a Municipal Agreement to place Communications Facilities in the Public Right-of-Way, or for whom a resolution has been adopted by the City Council, prior to the adoption of this Article, will be deemed to have complied with the Municipal Agreement requirement, but must still comply with the remaining provisions of this Article, including those pertaining to review, permitting and site design standards.

Section 3.2 Not Essential Services.

Communications Facilities regulated by this Article shall not be considered essential services or public utilities.

Section 3.3 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.

Section 3.4 “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 City’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 City 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.

Section 3.5 Violation of this Article:

Violation of any of the provisions of this Article 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.

Section 3.6 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 31 Zoning Section 31-28 Wireless Telecommunications Towers and Antennas, as well as by other applicable codes and ordinances of the City.

Section 3.7 Waiver.

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

- (i) Will prohibit or have the effect of prohibiting any telecommunications service pursuant to 47 U.S.C. 253(a); or
- (ii) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- (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
- (iv) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide wireless service to any prospective customer within the City.

Section 3.8 Wireless Consultant Contact Information

As specified in section 2.1(b) herein, Hoplite Communications, LLC, is the primary point of contact for the City for all matters concerning this Article. Hoplite can be contacted via email at peter.lupo.hoplite@gmail.com.

Section 3.9 Effective Date.

This Article shall take effect thirty (30) days after its passage, approval and publication.

PASSED: June 15, 2021

APPROVED: June 16, 2021

President of Council

Mayor

ATTEST:

City Clerk