

**ORDINANCE No. RO-04-21**

**AN ORDINANCE TO AMEND CHAPTER 217 “ZONING” OF THE CODE OF THE TOWNSHIP OF WASHINGTON TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE TOWNSHIP OF WASHINGTON**

**WHEREAS**, the Township of Washington (“Township”) desires to encourage small wireless telecommunication infrastructure investment by providing a fair and uniform process for the deployment of small wireless telecommunication facilities, while enabling the Township to promote the management of the rights-of-way in the overall interest of the public health, safety and welfare within its municipal boundaries; and

**WHEREAS**, the Township recognizes that small wireless facilities are critical to delivering reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses, schools within the Township; and

**WHEREAS**, the Township recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

**WHEREAS**, the Township intends to fully comply with state and federal law to the extent it preempts local municipal control and any terms contained herein.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Washington, Morris County, New Jersey, that Chapter 217 “Zoning” of the Code of the Township of Washington shall be amended by adding the following Article XVI that will read as follows:

**SECTION ONE: Article XVI SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY**

**§217-153 Purpose and Scope**

(A) Purpose. The purpose of this Article is to establish uniform policies and procedures for the deployment and installation of small wireless facilities in rights-of-way within the Township’s jurisdiction and owned by the Township, which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Township rights-of-way and the Township as a whole.

(B) Intent. In enacting this Article, the Township is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

- (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
- (4) ensure reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
- (5) protect against environmental damage, including damage to trees; and
- (6) facilitate rapid deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses, schools within the Township.

(C) Conflicts with Other Chapters. This Article supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

## §217-154 Definitions

- (A) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless telecommunications services.
- (B) “Applicable Building and Safety Codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this Article.
- (C) “Applicant” means any person who submits an application and is a wireless telecommunications provider.
- (D) “Application” means a request submitted by an applicant (i) for a small cell building/work permit to collocate small wireless facilities in a ROW; or (ii) to approve the installation or modification of a utility pole or wireless telecommunications facility support structure in a ROW.
- (E) “Township Owned Pole” means (i) a utility pole owned or operated by the Township in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Township in the ROW that supports only Wireless Telecommunications Facilities.
- (F) “Collocate” means to install, mount, maintain, modify, operate, or replace wireless telecommunications facilities on or adjacent to a wireless support structure or utility pole. “Collocation” has a corresponding meaning.
- (G) “Day” means calendar day.
- (H) “Fee” means a one-time charge.
- (I) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Township.
- (J) “Rate” means a recurring charge.
- (K) “Rights-of-Way” or “ROW” means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Township and owned by the Township.
- (L) “Small Cell Building/Work Permit” means a non-discretionary building or work permit authorizing the installation of a small wireless facility.
- (M) “Small Wireless Facility” or “Small Cell” means a wireless telecommunications facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six 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 cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 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, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- (N) “Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including Township-owned poles.

- (O) “Wireless Telecommunications Facility” means equipment at a fixed location that enables wireless telecommunications between user equipment and a communications network, including: (i) equipment associated with wireless telecommunications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (P) “Wireless Telecommunications Infrastructure Provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless telecommunications facilities or wireless telecommunications support structures, but that is not a wireless telecommunications services provider.
- (Q) “Wireless Telecommunications Provider” means a wireless telecommunications infrastructure provider or a wireless telecommunications services provider.
- (R) “Wireless Telecommunications Services” means any services, whether at a fixed location or mobile, provided using wireless telecommunications facilities.
- (S) “Wireless Telecommunications Services Provider” means a person who provides wireless telecommunications services and is authorized to provide such services pursuant to an FCC license.
- (T) “Wireless Telecommunications Support Structure” means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless telecommunications facilities. Such term shall not include a utility pole.

**§217-155 Permitted Use; Application and Fees**

- (A) Permitted Use: Collocation of a small wireless facility or a new or modified utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use not requiring discretionary zoning approvals subject to the restrictions in Section 217-157.
- (B) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a small cell building/work permit therefore, except as otherwise provided in this Article.
- (C) Permit Application. All small wireless facility applications for small cell building/work permits filed pursuant to this Article shall be on a form, paper or electronic, provided by the Township.
- (D) Application Requirements. The small cell building/work permit application shall be made by the wireless telecommunications provider or its duly authorized representative 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 work and the purpose of the work proposed.
  - (4) A small wireless facility shall comply with all applicable building and safety codes.
- (E) Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height at the same location.

- (F) Information Updates. Any amendment to information contained in a small cell building/work permit application shall be submitted in writing to the Township within thirty (30) days after the change necessitating the amendment.
- (G) Application Fees. Unless otherwise provided by law, all applications for small cell building/work permits pursuant to this Article shall be accompanied by a fee representing a reasonable approximation of the Township's costs reasonably incurred as a direct result of the application, but shall not exceed \$500 each for up to five small wireless facilities addressed in the application and \$100 for each additional small wireless facility, or \$1,000 each for applications involving installation of a new pole (*i.e.*, not a collocation).

**§217-156 Action on Permit Applications**

- (A) Review of Small Wireless Facility Applications.
  - (1) The Township Engineer shall review the application for a small cell building/work permit in light of its conformity with applicable regulations of this Article and all applicable building and safety codes, and shall issue a small cell building/work permit on uniform terms and conditions subject to the following requirements:
    - (a) Within 10 days of receiving an application, the Township must determine and notify the Applicant whether the application is complete; or, if an Application is incomplete, the Township must specifically identify the missing information.
    - (b) Determine whether the application meets the requirements in Section 4(A)(1) above and issue an approval or denial within sixty (60) days for collocations and ninety (90) days for new poles. The applicable time periods will commence upon application submission except that, in the event Township provides notice within 10 days of submission that an application is materially incomplete, the applicable time period will commence upon re-submission.
    - (c) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Township denies the application. The applicant may cure the deficiencies identified by the Township and resubmit the application within 30 days of the denial without paying an additional application fee. The Township shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the Township shall be limited to the deficiencies cited in the original denial.
  - (2) If the Township fails to act on an application within the applicable review period, the applicant may provide notice that the time period for acting has lapsed and the application is then deemed approved.
  - (3) An applicant seeking to construct, modify or replace a network of small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single small cell building/work permit for multiple small wireless facilities. Provided however, the Township's denial of any site or sites within a single application shall not affect other sites submitted in the same application. The Township shall grant a small cell building/work permit for any and all sites in a single application that it does not deny subject to the requirements of this Section.
- (B) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the Township shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

**§217-157 Small Wireless Facilities in the ROW; Maximum Height; Other Requirements**

- (A) Right-of-Way Permits, Siting Standards for Poles, Antennas and Cabinets in the Right-of-Way.
  - a. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit.

- b. Pole Siting Standards.
  - (1) Height. No Proposed Pole shall be taller than thirty-five (35) feet or 110% of the height of Poles in the Surrounding Streetscape, whichever is higher.
  - (2) Distance from curb line. No Proposed Pole shall be farther than eighteen (18) inches from the curb line unless approved by the Borough Engineer.
  - (3) Location, Safety and Aesthetics. No Proposed Pole shall be erected in the Right-of-Way unless it:
    - (a) Is replacing an Existing Pole; or
    - (b) Approved pursuant to a land development application by either the Township's Zoning Board of Adjustment or Planning Board pursuant to a land use application; or
    - (c) Located on the opposite side of the street from the Electric Distribution System; and
    - (d) For sites in the Township Residential Zones is a minimum of two hundred (200) linear feet from any other Existing Pole or Proposed Pole along the same side of the street, or for sites in the Township Non-Residential Zones is a minimum of one hundred (100) linear feet from any other Existing Pole or Proposed Pole along the same side of the street; and
    - (e) Is not located in an area with underground utilities; and
    - (f) Does not inhibit any existing sight triangles or sight distances; and
    - (g) Allows adequate room for the public to pass and re-pass across, along and through the Right-of-Way; and
    - (h) 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.
- c. Ground Level Cabinet Siting Standards.
  - (1) Ground Level Cabinets are prohibited in the Municipal Right-of-way in the Township Residential Zones and any future residential zones.
  - (2) Residential Zones provided that such Ground Level Cabinet:
    - (a) Is less than twenty-eight (28) cubic feet in volume; and
    - (b) Is finished and/ or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - (c) Does not inhibit any existing sight triangles or sight distance; and
    - (d) Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
- d. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.
  - (1) Pole Mounted Antennas are permitted on Existing Poles, provided that each Pole Mounted Antenna:
    - (a) Does not exceed three (3) cubic feet in volume; and
    - (b) Is finished and/ or painted and/ or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - (c) Does not inhibit any sight triangles or sight distance; and
    - (d) Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
  - (2) Pole Mounted Cabinets are permitted on Existing Poles in all Township Residential Zones and Township Non-Residential Zones provided that each Pole Mounted Cabinet:
    - (a) Does not exceed sixteen (16) cubic feet; and
    - (b) Is finished and/ or painted and/ or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - (c) Does not inhibit any sight triangles or sight distance; and
    - (d) Allows adequate room for the public to pass and repass across the Municipal Right-of-Way.

- (3) The Township may also require that an applicant provide a certification from a Licensed Professional Engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.
- (B) Maximum Size of Permitted Use. Small wireless facilities, and new or modified utility poles and wireless telecommunications support structures for the collocation of small wireless facilities may be placed in the rights-of-way as a permitted use subject to the following requirements:
  - (1) Each new or modified utility pole or wireless telecommunication support structure installed in the rights-of-way shall not exceed the greater of:
    - (a) Ten (10) feet above the tallest existing utility pole in the rights-of-way in place as of the effective date of this Article located within 500 feet of the new pole; or,
    - (b) Fifty (50) feet above ground level.
  - (2) New small wireless facilities in the rights-of-way shall not exceed the greater of:
    - (a) More than ten (10) feet above an existing utility pole or wireless telecommunications support structure in the rights-of-way in place as of the effective date of this Article; or
    - (b) Above the height for a new utility pole or wireless support structure under Section 5(A)(1).
- (C) Design Requirements. Any specific requirements imposed by the Township relating to design or placement of small wireless facilities will be reasonable, non-discriminatory, objective, and published in advance.
- (D) Zoning. Any wireless telecommunications provider that seeks to construct or modify a utility pole, wireless telecommunication support structure or wireless telecommunications facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements. In all other instances, no discretionary zoning approvals shall be required for projects which comply with the terms of this Article and a small cell building/work permit shall be issued.
- (E) Undergrounding Provisions. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior approval by Township staff in areas zoned for single family residential use, provided such requirements shall not prohibit the replacement of existing structures or result in an effective prohibition of service.

**§217-158 Effect of Permit**

- (A) Authority Granted; No Property Right or Other Interest Created. A small cell building/work permit from the Township authorizes an applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
- (B) Duration. Construction pursuant to a small cell building/work permit issued under this Chapter must be commence within twelve (12) months of issuance of the small cell building/work permit and diligently pursued thereafter, or such small cell building/work permit shall expire.

**§217-159 Removal, Relocation or Modification of Small wireless facility in the ROW**

- (A) Notice. Within ninety (90) days following written notice from the Township, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Township has determined that such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or installation of any Township improvement in or upon, or the operations of the Township in or upon, the rights-of-way.
- (B) Emergency Removal or Relocation of Facilities. The Township retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Township, as the Township may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Township shall notify the wireless telecommunications provider and provide the wireless telecommunications provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless telecommunications provider after cutting or removing a small wireless facility.
- (C) Abandonment of Facilities. Upon abandonment of a small wireless facility within the rights-of-way of the Township, the wireless provider shall notify the Township within ninety (90) days. Following receipt of such notice the Township may direct the wireless provider to remove all or any portion of the small wireless facility if the Township, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.

**§217-160 Rates**

- (A) ROW Administration Rate. A wireless telecommunications provider authorized to place small wireless facilities (including new utility poles or other wireless telecommunications support structures) in the rights-of-way shall pay to the Township the rate of \$0 annually per small wireless facility.
- (B) Attachment Rate. The rate to place a small wireless facility on a Township-owned pole in the right-of-way shall be \$270 per year per Township-owned pole. Such compensation together with the application fee and the ROW Administration Rate specified in this Article shall be the sole compensation that the wireless provider shall be required to pay the Township.
- (C) Cease Payment. A wireless provider is authorized to remove its facilities at any time from a Township-owned pole in the rights-of-way and cease paying the annual rate to the Township.
- (D) Make-Ready. For Township-owned utility poles in the rights-of-way, the Township shall provide a good faith description of any make-ready work necessary to enable the pole to support the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed application. Any make-ready work, including pole replacements, shall be performed by the provider or its qualified contractor.

**§217-161 Miscellaneous**

Notwithstanding anything to the contrary in this Article, in the event that this Article, in whole or in part, is declared or determined by a judicial, administrative, or legislative authority (whether State or Federal) exercising its jurisdiction to be excessive, unreasonable, unenforceable, void, unlawful, or otherwise inapplicable, the judicial, administrative, or legislative order shall control the deployment of small wireless facilities in the Township until this Article is amended.

**SECTION TWO. RENUMBERING.** This Ordinance may be renumbered for codification purposes.

**SECTION THREE. SEVERABILITY.** The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph,

section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

**SECTION FOUR. REPEALER.** Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

**TOWNSHIP OF WASHINGTON  
COUNTY OF MORRIS  
STATE OF NEW JERSEY**

**ATTEST:**

\_\_\_\_\_  
Nina DiGregorio, RMC, Township Clerk

By: \_\_\_\_\_  
Matthew T. Murello, Mayor

Adopted:

Attest: I herein certify that the foregoing ordinance was duly adopted by the Washington Township Committee at a regular meeting held by the Township Committee on March 15, 2021.

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Nina DiGregorio, RMC, Township Clerk