

TOWNSHIP OF MAURICE RIVER

ORDINANCE NO. 690

**AN ORDINANCE OF THE TOWNSHIP OF MAURICE RIVER,
CUMBERLAND COUNTY, AMENDING CHAPTER VII, TRAFFIC, OF THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF MAURICE
RIVER, TO ADD SECTION 7-36, THE SITING OF POLES,
CABINETS, AND ANTENNAE**

WHEREAS, the Township of Maurice River ("Township") is aware that certain technological developments have made access to its Municipal Rights-of-Way desirable by certain telecommunications companies for the placement of small cell wireless facilities ("Small Cells"); and

WHEREAS, Maurice River Township is required to exercise ordinary care to maintain its streets and sidewalks and must not surrender or impair its control over the Township streets; and

WHEREAS, the Township acknowledges that its streets are used for the ordinary purposes of travel and such other uses as customarily pertain there-to 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; and

WHEREAS, the Township has determined that its Municipal 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 which therefore must be managed carefully ; and

WHEREAS, the Federal Telecommunications Act 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); and

WHEREAS, the Federal Telecommunications Act preserves local government's authority over the, "placement, construction and modification of personal wireless service facilities" 47 U.S.C. 332(c) (7) (A); and

WHEREAS, the Federal Telecommunications Act makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless services 47 U.S.C. 332(c) (7) (B) (i) (II); and

WHEREAS, the Federal Telecommunications Act provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services"; 47 U.S.C. 332(c) (7) (B) (i) (I); and

WHEREAS, recent developments in wireless technology, specifically the development of 5G, involve the placement of Small Cells and Cabinets in the Municipal Rights-of-Way; and

WHEREAS, New Jersey municipalities must give consent before a Small Cell, i.e. a small antenna, can be placed on existing poles pursuant to N.J.S.A. 48:3-19 and for the erection of New Poles within the municipal Rights-of-Way pursuant to N.J.S.A. 48:17-10; and

WHEREAS, the Federal Highway Administration has acknowledged the problem of overburdening the Municipal Right-of-way by stating, "[as] demand for the finite space in existing ROW increases, the difficulty and cost of adding new utility facilities and relocating existing utility facilities also increases. Just as significant is how utility service interruptions may add to public discontent with overall highway construction. It is therefore essential for planners, designers, and builders of street and highway projects to avoid unnecessary utility relocations..." Federal Highway Administration, Avoiding Utility Relocations, <https://fhwa.dot.gov/utilites/utilityrelo/2.cfm> (accessed March 7, 2018); and

WHEREAS, the Federal Communications Commission (FCC) has recently adopted an order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" WT Docket No. 17-79; WC Docket 17-84, which places a shot clock on municipal review and approval for the placement of Small Cells on Existing Poles and the placement of New Poles and Cabinets in the Municipal Right-of-Way; and

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

WHEREAS, Ground Level Cabinets attached to small cells trigger certain collocation requirements pursuant to Section 6409(a) of the middle Class Tax Relief and Jobs Creation Act of 2012 which raises serious concerns as to the ability of local government to protect the public's interest in the Municipal Right-of-Way when it comes to aesthetics and the ability of the public to pass and repass over same; and

WHEREAS, New Poles and Ground Level Cabinets also raise concerns related to sight triangle encroachments and other safety related issues related to the use of roadways by the public; and

WHEREAS, the FCC in its recent order provides that municipalities can impose aesthetic and location requirements on Small cells where said requirements are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployments; 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 Township'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, the Township has determined that the most efficient way to handle this process is to create a Right-of-Way Permit system for all New Poles, Cabinets and Antennae in the Municipal Right-of-Way; and

WHEREAS, the Township has determined that it is necessary to set forth clear standards in relation to the siting of Poles, Cabinets and Antennae for the benefit of its citizens and any utility which use or will seek to make use of said Municipal Right-of-way.

FOR THE FOREGOING REASONS, it is hereby ordained by the Township Committee of the Township of Maurice River in the County of Cumberland and State of New Jersey the following:

Traffic of the Revised General Ordinances of the Township of Maurice River is hereby amended through the addition of new Section 7-36 "Siting of Poles, Cabinets and Antennae" as follows:

Notwithstanding the foregoing, the siting of poles, cabinets and antennae within the Municipal Right-of-Way of the Township of Maurice River is subject to the issuance of a "Right-of-Way Permit" pursuant to Chapter VII, Section 7-36 of the Revised general Ordinances of the township of Maurice River.

Traffic of the Revised General Ordinances of the Township of Maurice River is hereby amended through the addition of new Section 7-36 "Siting of Poles, Cabinets, and Antennae in the Municipal Right-of-Way" as follows:

A. DEFINITIONS.

- a) "Anticipated Municipal Expenses" means the cost of processing an application for a Right-of-Way Permit including, but not limited to, all professional fees such as engineering and attorney costs incurred by the Township.
- b) "Cabinet" shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-way.
- c) "Electric Distribution System" shall mean the part of the electric system, after the transmission system, that is dedicated to delivering electric energy to an end user.
- d) "Existing Pole" shall mean a Pole that is in lawful existence within the Municipal Right-of-Way.
- e) "Ground Level Cabinets" shall mean a Cabinet that is not attached to an existing pole and is touching or directly supported by the ground.
- f) "Municipal Right-of-Way" shall mean the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Township as an easement or in fee simple ownership. This term also includes Rights-of-Way held by the County of Cumberland where the township's approval is required for the use of same pursuant to N.J.S.A 27:16-6. This Term shall not include private roadways.
- g) "Pole" shall mean a long, slender, rounded piece of wood, concrete or metal.
- h) "Pole Mounted Antenna" shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited

to, small cell equipment and transmission media such as femtocells, picocells, microcells, and outside distributed antenna systems.

- i) "Pole Mounted Cabinet" shall mean a Cabinet that is proposed to be placed on an Existing or Proposed Pole.
- j) "Proposed Pole" shall mean a Pole that is proposed to be placed in the Municipal Right-of-Way.
- k) "Right-of-Way Agreement" shall mean an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.
- l) "Right-of-Way Permit" shall mean an approval from the Township setting forth applicant's compliance with the requirements of this Article.
- m) "Surrounding Streetscape" shall mean Existing Poles, Signs, Curbing, Sidewalks, Mailboxes, and any other structure typically found in rights-of-way within the same Right-of-Way which are located within five hundred linear (500) feet of the Proposed Pole. Poles carrying electric transmission lines shall not be considered part of the "Surrounding Streetscape."
- n) "Township Committee" shall mean the Township Committee of the Township of Maurice River.
- o) "Utilities Regulated by the Board of Public Utilities" shall mean companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes.
- p) "Utility Service" shall mean electric, telephone, or cable service.
- q) "Zone, Non-Residential" shall mean the PPHB, PSI, and VLI zones as designated in Chapter XXXV of the Revised General Ordinances of the Township of Maurice River.
- r) "Zone Residential" shall mean any zones permitting single family, two family, or multifamily residences, assisted-living residences, nursing homes, and/or residential health care facilities.

B. ACCESS TO RIGHT-OF-WAY, RIGHT-OF-WAY PERMITS:

- 1. No person shall operate or place any type of Pole Mounted Antenna, Cabinet or pole within the Municipal Right-of-Way except pursuant to a Right-of Way permit per the provisions of this section.

C. APPLICATION TO UTILITIES REGULATED BY THE BOARD OF PUBLIC UTILITIES:

- 1. Notwithstanding any franchise or Right-of-Way Agreement to the contrary, all Antennae, Poles, and Cabinets proposed to be placed within the Municipal Right-of-Way by a Utility Regulated by the Board of Public Utilities, or any other entity with legal access to the Municipal Right-of-Way, shall be subject to the standards and procedures set forth in this Article and shall require Right-of-Way Permits for the siting of Poles, Antennae and Cabinets in the Municipal Right-of-Way.

D. RIGHT-OF-WAY PERMITS, SITING STANDARDS FOR POLES, ANTENNAE AND CABINETS IN THE RIGHT-OF-WAY:

- 1. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit.
- 2. Pole Siting Standards
 - i. Height: No Pole shall be taller than thirty-five (35) feet or 10% of the average height of Poles in the Surrounding Streetscape, whichever is higher.

- ii. Location, Safety and Aesthetics. No Pole shall be erected in the Right-of-Way unless it:
 - 1. Is used to bring Utility Service across the Right-of-Way to an existing or proposed development from an Existing Pole; or
 - 2. Is replacing an Existing Pole; or
 - 3. Approved pursuant to a land development application by the Township's Land Use Board pursuant to a land use application; or
 - 4. Located on the opposite side of the street from the Electric Distribution System; and
 - 5. For sites in Residential Zones, it is two hundred linear feet from any other Existing Pole or Proposed pole along the same side of the street, or for sites in Non-Residential Zones is one hundred linear feet from any other Existing Pole or Proposed Pole along the same side of the street; and
 - 6. Is not located in an area with underground utilities; and
 - 7. Does not inhibit any existing sight triangles or sight distance; and
 - 8. Allows adequate room for the public to pass and re-pass across the Municipal Right-of-Way; and
 - 9. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties.

- iii. Application of Pinelands Regulations to proposed Poles. Notwithstanding the standards set forth in subsection (ii) of Section 7-36D(z)(ii), no Pole shall be sited in a manner inconsistent with Subchapter 5 and 6 of the Pinelands Comprehensive Manage Plan (N.J.A.C. 7:50-5 and 6 et seq.)

3. Ground Level Cabinet Site Standards

- i. Ground Level Cabinets are prohibited in Residential Zones.

- ii. Ground Level Cabinets are permitted in Non-Residential Zones provided that each Ground Level Cabinet:
 - 1. Is less than twenty-eight cubic feet in volume; and
 - 2. 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
 - 3. Does not inhibit an existing sight triangles or sight distance; and
 - 4. Allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
 - 5. Ground level cabinets shall be marked at the four corners of each side of the ground level cabinet with reflective tape or reflective markers in order to alert motorists of the existing ground level cabinet.

4. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards
 - i. Pole Mounted Antennae are permitted on Existing Poles in all zones, provided that each Pole Mounted Antenna:
 1. Does not exceed three (3) cubic feet in volume; and
 2. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 3. Does not inhibit sight triangles or sight distance; and
 4. Allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
 - ii. Pole Mounted Cabinets are permitted on Existing Poles in all zones, provided that each Pole Mounted Cabinet:
 1. Does not exceed sixteen (16) cubic feet; and
 2. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 3. Does not inhibit sight triangles or sight distance; and
 4. Allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
 - iii. The Township may also require that a Permittee provide a certification from a licensed engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet and the structure on which it is proposed to be mounted.
 - iv. The above Certification by a Licensed Engineer shall be subject to review and approval by the Township Engineer who shall prepare a report reflecting the Township Engineer's findings and any recommendations. A copy of such report shall be provided to the applicant and to the Township Committee.

E. APPLICATION PROCESS:

1. Pre-Application Meeting-Prior to making a formal application with the Township for use of the Municipal Right-of-Way, all applicants shall meet with the Township Engineer to review the scope of applicant's proposal.
2. The Township Committee shall, by resolution, approve or disapprove every Right-of-Way Permit application based on the recommendations provided to it by the Township Engineer.
3. All applications made under this section which trigger Federal Communications Commission shot clock rules pursuant to the Federal Communications Commission Order Titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the

Removal of Barriers to Infrastructure Investment." WT Docket NO. 17-79; WC Docket No. 17-84 shall be processed on an expedited basis.

4. Every application for a Proposed Pole shall be deemed incomplete upon filing unless same includes:
 - i. A stamped survey prepared by a New Jersey licensed surveyor demonstrating that any such Proposed Pole is located within the Municipal Right-of-Way.
 - ii. For sites within the Pinelands Area, a certificate of filing from the New Jersey Pinelands Commission.
5. The Township Engineer shall review applications made pursuant to this article and advise the Township Council of his or her recommendation to approve or disapprove same. If he or she recommends that an application be disapproved, the factual basis for that recommendation must be transmitted to the Township Committee in writing.
6. If the Township Committee denies any application made under this Section, it shall do so in writing and set forth the factual basis therefor.
7. Upon the completion of construction of improvements identified in the approved permit, the applicant shall notify the Township Clerk in writing that all construction is complete.
8. Upon notification noted above, the Township Engineer shall conduct a post-construction inspection to confirm that all improvements have been installed in accordance with the approved plans. This inspection will verify the location of the construction components only and will not include any structural, electrical or mechanical inspection that may be required by the Township Construction Code Official.
9. Upon completion of the inspection noted above, the Township Engineer shall provide a written report to the Township Committee as to whether or not the work has been installed in accordance with the approved plans and approved permit.
10. The applicant's escrow shall not be returned until the Township Engineer has determined that all work has been performed as per the approved permit and has been performed in a satisfactory manner. Release of the applicant's escrow shall be approved by the Township Committee upon recommendation of the Township Engineer.

F. WAIVER

1. Except for standard set forth in Subchapter 5 and 6 of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5 and 6 et seq.), the Township Committee may waive any siting standard set forth in Section 372-38 where the applicant demonstrates that strict enforcement of said standard:
 - i. Will prohibit or have the effect of prohibiting any interstate 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 by the Federal Communications Commission Order Entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barriers to Infrastructure Investment." WT Docket NO. 17-79; WC Docket No. 17-84.

G. RIGHT-OF-WAY PERMIT FEES AND DEPOSIT TOWARDS ANTICIPATED MUNICIPAL EXPENSES:

1. Every Right-of-Way Permit application must include a Right-of-Way Permit Fee in the following amounts:
 - i. One (1) collocation site on Existing Pole- \$500.00.
 - ii. Each additional collocation site on an Existing Pole- \$200.00
 - iii. The application fee for a telecommunication facility to be newly installed shall be \$500.00.

2. Deposit Towards Anticipated Municipal Expenses:
 - i. In addition to the Right-of-Way Permit Fee, the Township shall, require the posting of a two thousand-dollar (\$2,000.00) Deposit Towards Anticipated Municipal Expenses related to an application made pursuant to this Chapter.
 - ii. Applicant's Deposit Towards Anticipated Municipal Expenses shall be placed in an escrow account. If said deposit contains insufficient funds to enable the Township to perform its review, the Chief Financial Officer of the Township shall provide applicant a notice of insufficient balance. In order for review to continue, the applicant shall, within ten (10) days post an additional two thousand-dollar (\$2,000.00) deposit.
 - iii. The Chief Financial Officer shall, upon request by the applicant, and after a final decision has been made by the Township Committee regarding his or her pending Right-of-Way Permit application, and subject to review by the Township Engineer and Township Solicitor, refund any unused balance from applicant's Deposit Towards Anticipated Municipal Expenses.

3. Annual Fee Expenses:
 - i. An Annual Right-of-Way fee payable to the Township by the applicant for the non-exclusive occupancy of the Township Right-of-Way by the applicant shall be in the amount of \$500.00.
 - ii. The applicant shall be required to notify the Township Clerk in writing on a Township approved form advising as to but not limited to the following information:
 - a) Whether or not the communication facility is actively used.

- b) The name, address, telephone number and point of contact of the owner or lessee of the communication facility.

H. PERMITTED COMMUNICATIONS FACILITY USES/ ADMINISTRATIVE REVIEW; APPLICATION:

1. Permitted Use: the following uses within the Public Right-of- Way shall be a permitted use, subject to Administrative Review only and issuance of a Permit as set forth in this Section. All such uses shall be in accordance with all other applicable provisions of this Chapter:
 - 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 herein.
 - 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 set forth herein; and
 - iv. Construction of a Communications Facility, other than those set forth in subparagraphs (i), (ii), or (iii) in this Subsection 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.
2. Permit Required: No person shall place any facility described above in the Public Right-of-Way without first filing an Application for same and obtaining a Permit therefor, except as otherwise expressly provide in this chapter.
3. Proprietary or Confidential Information in Application: The Township 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 making each portion of such materials accordingly, and the Township shall treat the information as proprietary and confidential, subject to New Jersey Open Public Records Act and the Township's determination that the Applicant's request for confidential or proprietary treatment of an Application material is reasonable.
4. 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 numbers, and e-mail addresses, including emergency contact information for the applicant.
 - ii. The names, addresses, telephone numbers, and email 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. 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.
 - v. 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 in accordance with Applicable Codes.
 - vi. For any new aboveground facilities, visual depictions or representations if not include in the construction drawings.
5. Ordinary Maintenance, Repair, and Replacement: An Application shall not be required for Ordinary Maintenance, Repair, and Replacement, other than to the extent required for Permits described herein.
6. Information Updates: Any material change to information contained in an Application shall be submitted in writing to the Township within thirty (30) days after the change necessitating the change.
7. Application Fees: Unless otherwise provide by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Subsection G2 above.

I. ACTION OF ADMINISTRATIVE REVIEW APPLICATIONS

- 1. Review of Applications for Administrative Review
 - i. The Township shall review the Application in light of its conformity with applicable provisions of this Chapter, and shall issue a Permit on nondiscrimination terms and conditions, subject to the following requirements:
 - a) Within twenty (20) days of receiving an Application, the Township shall determine and notify the Applicant whether the Application is complete; if an application is incomplete, the Township shall specifically identify the missing information and may toll the approval interval in Subsection 11b below. The Applicant may resubmit the completed Application within twenty (20) days without additional charge, and the subsequent review

will be limited to the specially 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 Township) in which case a new Application and Application Fee for same must be submitted; and

- b) The Township shall 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 deemed complete;
 - c) The Township shall advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions and/or regulations on which the denial was based. A decision to deny an application shall be in writing and supported by substantial 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 Township. The review period or "shot clock" shall run until the written decision, supported by substantial evidence, is related and sent to the Applicant contemporaneously. 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 unless denial was issued due to non-compliance with Design Guidelines or other requirements under this Article. (in which case a new Application Fee must be paid). The Township shall approve or deny the revised Application within thirty (30) days of receipt of the revised Application. The subsequent review by the Township shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies.
- ii. If the Township fails to act on an application within the review period referenced in Subsection 11b, the Applicant may provide the Township written notice that the time period for acting has lapsed, and the Township then has twenty (20) days after receipt of such notice within which to render its written decision, failing which the Application is then deemed approved by passage of time and operation of law and a Permit shall be deemed issued for such Application. Applicant shall provide notice to the Township at least seven (7) days prior to beginning construction or Collocation pursuant to the de facto Permit issued under this Subsection, and such notice shall not be construed as an additional opportunity for objection by the Township or other entity to the deployment.

- iii. An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Township's Application requirements and process, file a consolidated Application and receive a Single Permit for multiple Communications Facilities, or multiple Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.
2. Review of Eligible Facilities Requests: Notwithstanding any other provision of this Chapter, the Township shall approve within sixty (60) days and may not deny Applications for Eligible Facilities Requests according to the procedures established under 47 C.F.R. 1.40001(c).
 3. Small Wireless Facilities; Maximum Height; Other Requirements:
 - i. Maximum Size of Permitted Use: Small Wireless Facilities, and new modified or Replacement Poles, Towers and Support Structures 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, subject to the following requirements:
 - a) Each new, modified or Replacement Pole, Tower, or Support Structure installed in the Public Right-of-Way 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 Right-of-Way, in place as of the effective date of this Chapter, and located within 500 feet of the new proposed Pole, Tower or 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 Right-of-Way shall not exceed the greater of:
 1. Five (5) feet above the height of the Pole, Tower or Support Structure being modified or replaced in place as of the effective date of this chapter; or ten (10) feet on utility distribution poles where required by the electrical utility separation requirements; or
 2. The height limit under Subsection D2.
 4. Discretionary Review Requirements: Unless an Applicant seeks to install a Communications Facility that conforms to the specific uses and size and height limitations set forth in above or involves Ordinary Maintenance, Repair and replacement, the Application shall be subject to the

Discretionary Review- e.g., zoning/land use-requirements set forth in the Township Land Use Ordinance applicable to construction and placement of such facilities.

5. Undergrounding Provisions: The Township shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the Township and all Public Right-of-Way 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 Township underground requirements that are 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 Township 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 Township (which consent may not be unreasonably withheld, conditioned or delayed) or, alternatively, the wireless provided may reasonably replace the existing Pole(s) or vertical structure locations for Antennae 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 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 the neighborhoods with underground utilities, whether being converted from overhead utilities or initially

underground, micro-wireless 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.

6. Effect of Permit:

- i. Authority Granted; No Property Right or Other Interest Created: A Permit from the Township authorizes an Applicant to undertake only certain activities in accordance with this Chapter, 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 Public ROW.
- ii. Duration: Any Permit for construction issued under this Article 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.

7. Removal, Relocation or Modification of a communications Facility in the Right-of-Way:

- i. Notice: Within ninety (90) days following written notice from the Township, 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 Right-of-Way whenever the Township has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance or installation or any Township improvement in or upon, or the operations of the Township in or upon, the Public Right-of-Way. The Township shall apply the same standards to all utilities in the Public Right-of-Way.
- ii. Emergency Removal or Relocation of Facilities: The Township retains the right and privilege to cut power to or move any Communications Facility located within the Public Right-of-Way of the Township, as the Township may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the Township 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 Township 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 Township shall direct the Provider to remove all or any portion of the Communications Facility if the

Township 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 Township 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 pole owners may paint, recondition, or otherwise improve or repair the owner's Poles in a substantial way ("Reconditioning Work"). The Provider shall reasonably cooperate with the owner to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider's approved use of the facility.

J. MISCELLANEOUS PROVISIONS:

- 1. Any approval received pursuant to this Chapter does not relieve the applicant from receiving consent from the owner of the land above which an applicant's facility may be located as may be required under New Jersey Law, or the owner of any existing pole on which the facility may be mounted.
- 2. Applicant must, in addition to receiving a Right-of-Way Permit, also receive all necessary road opening permits, construction permits, and any other requirement set forth in the Revised Ordinances of the Township of Maurice River or state statutes.
- 3. The Township's consent for use of County Roads, as required pursuant to N.J.S.A. 27:16-6, shall take the form of a Right-of-Way Permit subject to the standards and application process set forth in this Chapter. No such applicant shall be required to enter into a Right-of-Way Agreement with the Township.
- 4. Applicant must comply with all applicable state, local and federal regulations including, but not limited to, the New Jersey Pinelands Preservation Act (N.J.S.A. 13:18A-1).

K. PROPOSED POLES-PINELANDS COMMISSION PROCESS:

- 1. Application submission and modification. Where a Proposed Pole is located within a Pineland Area, written notification shall be given by the Township, by email or regular mail, to the Pinelands Commission within seven days after a determination is made by the Township that an application for a Right-of-Way Permit for the siting of a Proposed Pole is complete or if a determination is made by the Township Engineer that the application has been modified. Said notice shall contain:
 - i. The name and address of the applicant;
 - ii. The legal description and street address, if any, of the parcel that the applicant proposes to develop;
 - iii. A brief description of the proposed development, including uses and intensity of uses proposed;
 - iv. The application number of the Certificate of Filing issued by the Pinelands Commission and the date on which it was issued;
 - v. The date on which the application, or any change thereto, was filed, and any application number

- or other identifying number assigned to the application by the approval agency;
- vi. The approval agency with which the application or change thereto was filed;
- vii. The content of any change made to the application since it was filed with the Commission, including a copy of a revised plan or reports; and
- viii. The nature of the municipal approvals being sought.

2. Meetings and hearings. Where a meeting, hearing or other formal proceeding on an application for a Right-of-Way Permit in the Pinelands Area is required, the applicant shall provide notice to the Pinelands Commission by email, regular mail or delivery of the same to the principal office of the Commission at least five days prior to such meeting, hearing or other formal proceeding. Such notice shall contain at least the following information:

- i. The name and address of the applicant;
- ii. The application number of the Certificate of Filing issued by the Pinelands Commission and the date on which it was issued;
- iii. The date, time and location of the meeting, hearing or other formal proceeding;
- iv. The name of the approval agency, or representative thereof, that will be conducting the meeting, hearing or other formal proceeding;
- v. Any written reports or comments received by the approval agency on the application for development that have not been previously submitted to the Commission; and
- vi. The purpose for which the meeting, hearing, or other formal proceeding is to be held.

3. Notice of approvals and denials. The Pinelands Commission shall be notified of all approvals and denials of the Township Committee's determination related to an application for a Right-of-Way Permit in the Pinelands Area. The applicant shall, within five (5) days of the approval or denial, give notice by email or regular mail to the Pinelands Commission. Such notice shall contain the following information:

- i. The name and address of the applicant;
- ii. The legal description and street address, if any, of the parcel that the applicant proposes to develop;
- iii. The application number of the Certificate of Filing issued by the Pinelands Commission and the date on which it was issued;
- iv. The date on which the Township Council's approval or denial was issued;
- v. Any written reports or comments received by the approval agency on the application for development that have not been previously submitted to the Commission; and
- vi. Any revisions to the application not previously submitted to the Commission; and
- vii. A copy of the resolution, Right-of-Way Permit, or other documentation of the approval or denial. If the application was approved, a copy of any preliminary or final plan, plot or similar document that was approved shall also be submitted.

4. Review by the Pinelands Commission:

- i. Upon receipt by the Pinelands Commission of the notice of approval, the Applicant's application for a Right-of-Way Permit shall be reviewed in accordance with the provisions of N.J.A.C. 7:50-4:36 through 7:50-4.42. The appeal or denial of the Township shall not be effective, and no development shall be carried out prior to a determination of whether the development approval will be reviewed by the Commission. If the applicant is notified that the Commission will review the application, no development shall be performed until such review has been completed.
- ii. Pursuant to N.J.A.C. 7:50-4.1(b) and until January 4, 1991, approvals issued by the Pinelands Development Review Board or the Pinelands Commission under the Interim Rules and Regulations shall serve as the basis for Pinelands Commission review of local approvals under this section.
- iii. Although the Pinelands Commission shall be notified of all denials, no such denial actions are subject to further review and action by the Pinelands Commission.
- iv. Effect of Pinelands Commission's decision on Township's approval of Right-of-Way Permit. If the Pinelands Commission disapproves an application for development which was previously approved by the Township by way of Right-of-Way Permit, such approval shall be automatically revoked. If the Pinelands Commission approves the decision of the Township Committee related to an application for a Right-of-Way Permit, subject to conditions, the Township Committee, shall, within thirty (30) days modify its approval to include all conditions imposed by the Pinelands Commission; and if final approval of the application is required, shall grant final approval only if the application for approval demonstrates that the conditions specified by the Pinelands Commission have been met by the applicant.

5. Participation of Pinelands Commission in Township Committee meetings. The Pinelands Commission may participate in a hearing held in Maurice River Township involving the issuance of a Right-of-Way Permit Pursuant to N.J.A.C. 7:50-4.26.

Section 3. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

Section 5. This Ordinance shall take effect upon final adoption and publication in accordance with law.

BE IT FURTHER ORDAINED AND ENACTED by the Township Committee of the Township of Maurice River, County of Cumberland and State of New Jersey, this Ordinance shall take affect immediately upon the adoption and publication of notice of adoption as prescribed by law.

First Reading: October 17, 2019

Publication: October 23, 2019 & October 30, 2019 (Summary)

Public Hearing: November 21, 2019