

**BOROUGH OF MIDLAND PARK
280 GODWIN AVENUE
MIDLAND PARK NJ 07432
MAY 26, 2022**

8:00 P.M. OPEN PUBLIC MEETING MINUTES

On May 26, 2022 at 8:00 P.M., the Mayor and Council of the Borough of Midland Park conducted a meeting at Borough Hall in the Council Chambers located at 280 Godwin Avenue as previously advertised. Agenda items for the meeting were also listed on the Borough website. There was also an option for the public to access the meeting electronically by dialing this Toll-Free number 1-866-899-4679, Access Code: 766-030-917.

Mayor Shortway called the meeting to order, noting the date as May 26, 2022, and that there will be a 3-minute limit to each individual addressing the Governing Body during the Open Public portions of the meeting.

SUNSHINE LAW STATEMENT: This meeting was held in accordance with the Sunshine Law, notice having been published according to law with a copy on file in the Borough Clerk's Office and a copy posted on the bulletin board in the Municipal Building.

Roll Call:	Mayor Shortway	Present
	Councilman DeBlasio	Present
	Councilman Damiano	Present
	Councilman Iannone	Present
	Councilman Kruis	Absent
	Councilwoman DeLuca	Present
	Council President Peet	Present

ALSO PRESENT: Borough Attorney Robert Regan, Borough Administrator/Borough Clerk Wendy Martin

PROCLAMATION:

LGBTQ+ Pride Month

Councilman Iannone read the Proclamation and **Melissa Wreski** – 6 Millington Drive, accepted the Proclamation from the **Mayor** and **Council**.

APPROVAL OF MINUTES:

A Motion to approve the Minutes of Work Session, Closed Session, and Open Public Meeting from the date of March 31, 2022 as all Governing Body members have previously received copies of the Minutes and copies are available to the Public at the Borough Clerk's Office.

Introduced by: Councilman Iannone **Seconded by: Council President Peet**

Roll Call:	Councilman DeBlasio	Aye
	Councilman Damiano	Aye
	Councilman Iannone	Aye
	Councilman Kruis	Absent
	Councilwoman DeLuca	Aye
	Council President Peet	Aye

OPEN TO THE PUBLIC:

Mayor Shortway opened the meeting to the public for general questions, concerns, and comments.

George Doumas – 34 1st Street, requested on behalf of the Waldwick/Midland Park Jr Football and Cheer Association to hold a social affair, Octoberfest and asked for permission to serve alcohol, on Saturday, September 24, 2022, 7:30 P.M. to 11:00 P.M. at the Wortendyke Park. The monies raised will be to offset the costs for equipment and cheer uniforms.

Borough Administrator/Clerk Wendy Martin stated the motion to allow the Waldwick/Midland Park Jr. Football and Cheer Association to hold an Octoberfest on Saturday, September 24, 2022, 7:30 P.M. to 11:00 P.M. at Wortendyke Park. **Council President Peet** motioned, and **Councilman Iannone** seconded. Motion was approved.

There being no one else from the Public and/or no callers were on the telephone, the Public Hearing was closed.

LIAISON REPORTS:

Mayor Shortway reported on May 14, 2022, the **Mayor** attended the Bergen County's Mayors meeting in Allendale. The Color Run was held in Midland Park on May 22, 2022 with 750 participants who raised \$75,000.00 to benefit cancer research. Borough Administrator/Clerk Wendy Martin partook in the Color Run as well. The Fire Department honored their deceased members at a ceremony on May 25, 2022. The **Mayor** stated 158 members have passed away since 1909.

Councilman Damiano Finance/Public Works/Chamber of Commerce/Economic Development
Councilman Damiano reported progress for **Finance, Chamber of Commerce, and Economic Development**. In an email, Matthew Tauber, Superintendent of **Department of Public Works** updated the **Councilman** on the Borough's projects. The 2021 Road Resurfacing project has been completed except for the striping of roadways. The jetting of approximately eighty-five percent of sanitary sewer cleaning program has been finished for this year. On May 14, 2022, the Borough's shredding event was well attended and is a needed function for the residents. A partial shipment of equipment for the Dairy Street recreation field has been received by the Department of Public Works. The playground equipment will be installed once all parcels have been acquired and after the ending of this year's summer camp program. The walking path at the Woodside Avenue lot has been paved and has been well received by the Midland Park residents. The Borough received a donated tree from Columbia Bank which has been planted by the Boy Scouts in Wortendyke Park. The **Councilman** wanted to thank the members of the Lions Club for planting flowers here at Borough Hall for Beautification Day.

Councilman Iannone Public Safety – Police/Property Maintenance/Personnel
Councilman Iannone stated on May 9, 2022, the **Police Department** had an onsite inspection and assessment of their facility and officers in order to obtain the Law Enforcement Reaccreditation through the New Jersey State Association. Chief Powderley wrote in his report a thank you to Lt. Gibbons for his hard work and long hours spent to prepare for the accreditation. During the annual Police Department meeting, topics such as wearing of Battle Dress Uniform pants with more pockets, allow officers to wear facial hair year-round and adding another sergeant to the force were discussed. The Chief and the Department wanted to send their deepest sympathies to the families and community in Uvalde, Texas who are suffering from the mass shooting on May 24, 2022. Midland Park Schools do

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have a full time School Resource Officer and have regular detail officers conducting safety checks

when schools are in session. Midland Park will increase uniformed police presence so that the community can feel reassured. The Chief participated in a State-wide staff meeting with the Attorney General discussing safety measures that can be taken. At 6:00 A.M. on May 25, 2022, Chief Powderley, Superintendent of Schools Marie Cirasella, Eastern Christian School and other school officials met to discuss plans for the future. The **Councilman** read John Torry's report into the Minutes for **Property Maintenance**. Several violations for high grass throughout the Borough have been addressed and corrected. **Councilman Iannone** also reported there was progress for **Personnel**.

Councilman Kruis

Planning Board/Building Dept/Fire Prevention/OEM

In the absence of **Councilman Kruis**, **Councilman Iannone** read his reports. The year-to-date figures for **Fire Prevention** were 181 violations that have been logged. On May 17, 2022, a presentation was given to outgoing high school seniors in light of the fire at Seton Hall University. The informative demonstration would help the students adjust to dorm life at college and educate them in the event of an emergency. Midland Park has received \$166,042.00 in reimbursement monies from the CARES Act and from FEMA. The **Planning Board** meeting was cancelled for this month. There was no report for the **Building Department**.

Councilwoman DeLuca

Public Safety – Fire/Ambulance/Library

Councilwoman DeLuca recapped the **Ambulance Corps** held their meeting on May 16, 2022 and still have calendar Raffle Tickets available. The **Fire Department's** wetdown celebrating the new Engine 532 will be celebrated on June 4, 2022 and is open to the public. The **Library Board's** meeting was held in person and via Zoom, on Tuesday May 17, 2022. Catherine Dileo, Library Director, provided the **Councilwoman** the following reports and updates: April 2022 shows a 26% increase in circulation from last year, foot traffic in the building was up 70% from 2021. The Library has created a small room with a table and chairs for the public to use. For Midland Park residents, there are no fees, and it can be used for meetings or private studying. The schools and the Library staff have worked together and compiled a summer reading program for all grades. Please visit the Library's website for more details. Congratulations to Emily Myhren, Children's Librarian, for being selected to receive 2022 NJLA/NJASL Amy Job Partnership Program Award. "Miss Emily" continues to provide year-round incentives and programs to the Midland Park students, ESY, and all children that come to the Borough's Library. The **Councilwoman** wanted to thank Adjustment and Planning Board Secretary Jessica Harmon for designing an informative Borough newsletter. Many residents have complimented the weekly update.

Council President Peet

Board of Health/ Board of Education/Ridgewood Water

Council President Peet announced for the **Board of Health**, Midland Park's COVID-19 positive cases are increasing. Please be vigilant and use caution when in large crowds. Ridgewood Water mailed an informative card to its users regarding Stage 2 water restrictions due to limitation of water supply. On June 17, 2022, Ridgewood Water will hold a four town (Borough of Glen Rock, Borough of Midland Park, Township of Wyckoff, and Village of Ridgewood) executive round table meeting to discuss compliance of lead pipe replacement. The **Council President** was able to attend the **Board of Education's** meeting. One of the Midland Park's High School seniors was awarded a national Mental Health Scholarship. The Building and Grounds committee and the Technical Committee stated in joint effort, they will resubmit the bond referendum in the future. Borough Administrator Wendy

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Martin has done a thorough compilation of facts and different scenarios as to what can be done concerning the fields.

Councilman DeBlasio

Recreation/Information Technology/Municipal Alliance

Councilman DeBlasio reported the **Recreation Department** is continuing with its background checks for football coaches. The sport usage of fields has had very few scheduling conflicts in the past month. There was an open house for summer camp and Recreation Director Kathy LaMonte stated enrollment numbers are back up to preCOVID-19 times. The Memorial Day weekend celebration's event planning has been completed. The **Councilman** thanked the Boy Scouts and the Lions Club for contributing to Beautification Day and making it a success. For **Information Technology**, **Councilman DeBlasio** stated Phil Scaglione, Information Technology Director, worked with the members of the Police Department to reach the security goal. Somerset County Court System reported that their computer system was "hacked" into. Small municipalities are being targeted and Mr. Scaglione is on alert and says all staff members should be as well for suspicious emails. Susan Hartmann emailed the **Councilman** regarding the next scheduled meeting for **Municipal Alliance** on May 11, 2022 and for the June 2022 meeting.

ADMINISTRATOR'S REPORT:

Borough Administrator/Clerk Wendy Martin relayed the qualifications the Fire Department must complete to obtain the Joint Insurance Fund certification. Fire Chief Matthew Tauber stated to Ms. Martin, he is up for the task so that Midland Park may receive grant monies and incentive payments. The ADA ramps and sidewalks are on schedule for Godwin Avenue project. On or about June 6, 2022, the street should have its milling begin. Ms. Martin discussed a plan of action with Chief Powderley, Michael Rau, Sgt Noah Van Vliet regarding the parking and safety concerns near the Mosque during the Islamic holidays and pray hours. An email has been sent to Imam Moutaz Charafas of El-Zahra Islamic Center at 218 Irving Street outlining the topics and concerns that have been brought to the **Mayor** and **Council's** attention. Ms. Martin will schedule a meeting with the Imam and Borough staff to further discuss these issues and safety concerns. A member from the Ramsey Ambulance Corps has approached Ms. Martin to request the residents of Midland Park, join a program they are involved in. The Yellow Dot Program is being implemented by many neighboring towns. Ms. Martin forwarded this request to John Lazzari, Captain of the Ambulance Corps of Midland Park. **Council President Peet** requested Ms. Martin to research any ordinance pertaining to Ridgewood Water water restrictions. **Mayor** and **Council** agreed that any monies collected through fines should be received by the Borough. The **Council President** urged the necessity to conserve our water so that further restrictions do not have to be enforced.

ORDINANCES ON FINAL:

1. ORDINANCE #12-2022

"AN ORDINANCE TO AMEND CHAPTER 40 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED, 'FEES AND CHARGES: LAND DEVELOPMENT REGULATIONS'." (Paving Commercial Parking Lots & Soil Movement Permit Applications) BE IT ORDAINED by the Mayor and Council of the Borough of Midland Park, in the County of Bergen, and State of New Jersey as follows:

Section 1.

Chapter 40 of the Code of the Borough of Midland Park, Fees, and Charges: Land Development Regulations, §40-1, Miscellaneous Fees (p. 40:3), be and is hereby amended to add the following:

8. Paving of Commercial Parking Lots.

Paving or repaving of commercial parking lots \$250.00

If additional improved coverage exceeds 300 square feet, engineering review shall be required. A fee of \$250.00 shall be required for engineering escrow and \$125.00 for each additional review.

Section 2.

Chapter 40 of the Code of the Borough of Midland Park, Fees, and Charges: Land Development Regulations, §40-1, Miscellaneous Fees (p. 40:3), be and is hereby amended to add the following:

c. Fees for Soil Movement Applications.

1. For a minor soil movement application (50-149 cubic yards), the fee shall be \$50.00 plus an escrow for engineering of \$250.00. An additional fee of \$125.00 shall be required for engineering escrow for each plan revision.

2. Intermediate Soil Movement Permit.

(150 cubic yards and less than 500 cubic yards)

The application fee shall be \$100.00 plus \$1.00 per cubic yard, not to exceed 500 cubic yards. There shall be an engineering escrow for review of \$500.00, plus \$125.00 for each plan revision. A Road Bond in the amount of \$3,000.00 shall be required, plus an engineering inspection escrow of \$1,000.00. A Performance Bond shall also be required in such amount as determined by the Borough Engineer.

3. Major Soil Movement Permit.

(More than 500 cubic yards)

The application fee shall be \$1,000.00, engineering escrow \$1,500.00, attorney escrow \$1,500.00, Road Bond \$3,000.00, engineering inspection escrow \$1,000.00, Performance Bond to be determined by the Borough Engineer.

Section 3. Severability.

If any section, sentence, or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy which such judgment shall be rendered.

Section 4. Inconsistent Ordinances Repealed.

All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 5. Effective Date.

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

At this time **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #12-2022.

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #12-2022.

Introduced by: Council President Peet

Seconded by: Councilwoman DeLuca

Roll Call:

Councilman DeBlasio

Councilman Damiano

Councilman Iannone

Councilman Kruis

2. ORDINANCE #13-2022

“AN ORDINANCE TO AMEND CHAPTER XC OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED “FEES AND CHARGES” – ELEVATOR DEVICES

BE IT ORDAINED by the Mayor and Council of the Borough of Midland Park, in the County of Bergen, and State of New Jersey as follows:

Section 1.

Chapter 90 of the Code of the Borough of Midland Park, Fees and Charges, Section 90-10, Fees For Chapter 10, Building and Housing, Subsection 10-1.3, Fees For Construction Permits, is hereby amended to add the following:

f. Elevator devices:

- (1) New and altered elevator devices not of group R-3, R-4, R-5 or exempt devices in R-2, shall be as follows:

(a) Traction and winding drum elevators:	
(i) One to ten floors	\$340.00
(ii) Over ten floors	567.00
(b) Hydraulic elevators	302.00
(c) Roped hydraulic elevators	340.00
(d) Escalators, moving walks	302.00
(e) Dumbwaiters	76.00
(f) Stairway chairlifts, inclined and vertical lifts and manlifts	76.00

Additional charges for devices equipped with the following features shall be as follows:

(g) Oil buffers	\$ 60.00
(h) Counterweight governor and safeties	151.00
(i) Auxiliary power generator	114.00

- (2) New and altered elevator devices of group R-3, R-4, R-5 and exempt devices in R-2, shall be as follows: \$204.00

Except dumbwaiters, stairway chairlifts, inclined and vertical wheelchair lifts \$ 76.00

These fees shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with NJAC 5:23-2.19 and 2.20

- (3) The fee for routine and periodic inspections and tests for elevator devices not of group R-3, R-4, R-5, or exempt devices in R-2, shall be as follows:

(a) Six-month routine inspection of escalators	\$ 211.00
(b) One-year periodic inspection and witnessing of tests of elevator devices:	
(i) Traction and winding drum elevators:	
(1) One to 10 floors	\$ 302.00
(2) Over ten floors	362.00
(c) Hydraulic elevators	227.00
(d) Roped hydraulic elevators	302.00
(e) Moving walks	484.00
(f) Dumbwaiters	120.00
(g) Stairway chairlifts, inclined and	

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vertical lifts and manlifts	183.00
(h) Escalators	484.00

Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:

(j) Oil buffers (charge per oil buffer)	\$ 60.00
(k) Counterweight governor and safeties	120.00
(l) Auxiliary power generator	76.00

(4) The fee for the three-year or five-year inspection of elevator devices shall be as follows:

(a) Traction and winding drum elevators	
(i) One to 10 floors (5-year inspection)	\$513.00
(ii) Over 10 floors (5 year inspection)	646.00
(b) Hydraulic and roped hydraulic elevators:	
(i) 3-year inspection	387.00
(ii) 5-year inspection	227.00

(5) The fee for any re-inspection of an elevator device shall be: \$203.00

and shall be billed separately from the above fees upon the issuance of a Notice of Violation necessitating a re-inspection

Plan review credit 20%

Section 2. Severability.

If any section, sentence, or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy which such judgment shall be rendered.

Section 3. Inconsistent Ordinances Repealed

All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 4. Effective Date

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

At this time **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #13-2022.

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #13-2022.

Introduced by: Councilwoman DeLuca Seconded by: Council President Peet

Roll Call:

Councilman DeBlasio	Aye
Councilman Damiano	Aye
Councilman Iannone	Aye
Councilman Kruis	Absent
Councilwoman DeLuca	Aye
Council President Peet	Aye

3. ORDINANCE #15-2022

“AN ORDINANCE TO AUTHORIZE VARIOUS MUNICIPAL IMPROVEMENTS, ACQUISITIONS AND PROJECTS IN THE BOROUGH OF MIDLAND PARK, TO APPROPRIATE THE SUM OF \$135,500.00 TO PAY THE COST THEREOF, FROM THE CAPITAL IMPROVEMENT FUND.”

BE IT ORDAINED, by the Borough Council of the Borough of Midland Park, in the County of Bergen, New Jersey as follows:

Section 1. The following is to be funded from the Capital Improvement Fund and is hereby authorized for:

1. Fire

Purchase Turnout gear	\$20,000.00
Purchase Fire hoses	\$ 7,500.00

2. Department of Public Works

Reserve for Drainage projects	\$25,000.00
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3. Building & Grounds

Replace garage door @ Firehouse & DPW	\$30,000.00
Fire Alarm system-DPW, Firehouse, Social Hall	\$30,000.00
Door Replacements: Police Dept & DePhillips	\$23,000.00

Section 2. The sum of \$135,500.00 hereby appropriated to the payment of the cost of such acquisitions and improvements authorized and described in Section 1 hereof. Said sum so appropriated shall be met from the Capital Improvement Fund of the Borough.

Section 3. Said improvements are lawful capital improvements of the Borough having a period of usefulness of at least five (5) years. Said improvements shall be made as a general improvement, and no part of the cost has been nor shall be assessed against property specially benefited.

Section 4. The capital budget is hereby amended to conform with the provisions of this capital ordinance to the extent of any inconsistency therewith and the resolutions promulgated by the Local Finance Board showing full detail of the amended capital budget and capital program as approved by the Director, Division of Local Government Services, is on file with the Borough Clerk and is available for public inspection.

Section 5. This ordinance hereby incorporates the provisions of N.J.S.A. 40A:2-20.

Section 6. This ordinance shall take effect at the time and in the manner provided by law.

At this time **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #15-2022.

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #15-2022.

Introduced by: Councilman Damiano Seconded by: Councilwoman DeLuca

Roll Call:	Councilman DeBlasio	Aye
	Councilman Damiano	Aye
	Councilman Iannone	Aye
	Councilman Kruis	Absent
	Councilwoman DeLuca	Aye
	Council President Peet	Aye

CONSENT AGENDA:

All matters listed below are considered by the Borough Council to be routine in nature. There will be no separate discussion of these items. If any discussion is desired by the Borough Council, that item will be removed from the consent agenda and considered separately:

Resolution #098-2022 Zoning Board Escrow Refund

WHEREAS, at the Zoning Board of Adjustment meeting of May 11, 2022 it was approved by Motion and recommended by the Zoning Board, to return the unused escrow to the following parties:

Payee	Address Mailing Address	Block	Lot	Account #	Amount
Gombas, Gregory	19 Maple Avenue Midland Park, NJ 07432	30.02	1.01	T-20-300-430	\$ 36.59
Stanton, John	264 Park Avenue Midland Park, NJ 07432	25.10	40	T-20-300-195	\$ 17.31
Patterson, Tia	43 Oak Hill Road Midland Park, NJ 07432	25.10	48.01	T-20-300-400	\$ 11.15

Marrone, Christopher & Mary Ann	1 Pine Street Midland Park, NJ 07432	10.26	6	T-20-300-342	\$ 36.21
Keene, Glen & Susan	521 Godwin Avenue Midland Park, NJ 07432	38	10	T-20-300-385	\$ 13.69
Saadi, Albert	27 Hiawatha Court Midland Park, NJ 07432	25.11	9	T-20-300-177	\$ 31.59
Callender, Joseph	46 Brandon Road Midland Park, NJ 07432	27.01	10.02	T-20-300-145	\$ 37.00
Cummins, Jimmie & Lisa	262 Vreeland Avenue Midland Park, NJ 07432	11	44	T-20-300-341	\$ 38.99
Gonzales, Steven	190 Busteed Drive Midland Park, NJ 07432	7.05	8	T-20-300-456	\$ 14.29
Sasso, Michael & Theresa	46 Cross Avenue Midland Park, NJ 07432	20.09	14	T-20-300-015	\$ 258.00
Sasso, Michael & Theresa	46 Cross Avenue Midland Park, NJ 07432	20.09	14	T-20-300-282	\$ 32.95
Musacchio, Marie	127 Highland Avenue Midland Park, NJ 07432	15	24	T-20-300-425	\$ 29.03

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Midland Park that the Chief Financial Officer issue checks for the funds in the above stated amounts, to the above stated parties.

Resolution #099-2022 Resolution Calling for Review and Reform of OPRA

WHEREAS, the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., enacted in 2002, has been in effect long enough to review the impact on Municipalities; and

WHEREAS, it is the position of the Bergen County League of Municipalities (BCLOM), which represents all 70 municipalities in Bergen County, and the Borough of Midland Park, that OPRA can and must be improved upon to make it less onerous on municipalities and protect the safety and welfare of the public; and

WHEREAS, municipal staff and budgets are increasingly utilized to accommodate the requestors and commercial entities who bombard municipalities with public records requests to the extent that in some instances, additional personnel are hired primarily to handle such requests; and

WHEREAS, municipalities are already required by state law to post and provide certain information and documentation on their municipal websites, including but not limited to, annual budgets, annual financial statements, annual audits, public meeting notices and meeting minutes; and

WHEREAS, under existing law, OPRA fees are woefully inadequate for the amount of time and effort needed to search for documents; it takes valuable time away from staff — not only in the Clerk's office — but also among other departments that may be involved in the same request; and

WHEREAS, OPRA has become broadly construed in favor of access and the requestor and, a requestor who prevails in any proceeding in appealing a denial of access is permitted to collect exorbitant attorney's fees; **conversely, however, the resources and guidance available to record custodians and municipal counsel tasked with responding to such requests has narrowed drastically in the ever-changing OPRA arena, muddled by subsequent, voluminous and often-conflicting court decisions that contradict the original intent of the law and will continue to do so in the absence of necessary legislative reform; and**

WHEREAS, OPRA law allows outside businesses, and activist groups to utilize municipal time and services for marketing leads or private commercial gain, and for litigants to use OPRA as a method of discovery; and

WHEREAS, a clear distinction needs to be made between individual and commercial and discovery requests; and

WHEREAS, serious concerns about breaches or misuse of personal information exist along with the potential for OPRA to be exploited and abused by requestors, as a threat, harassment, or retaliatory measure to bury local governments in hundreds of requests, not necessarily because the requested records are of any particular interest, but merely because they can and have been emboldened by the courts to do so, to the significant detriment of all other municipal business; and

WHEREAS, most importantly, OPRA must be reformed to enable municipalities, their respective record custodians, and legal counsels to **protect the safety and welfare of the general public**;

WHEREAS, over the years, court decisions have chipped away at the reasonable expectation of privacy provision of the law, thus allowing the law to be molded and wielded as a tool that severs any sensible balance of transparency, and instead, **now perpetuates rampant and dangerous degrees of for-profit data-mining, unsolicited marketing and uncontrolled publications of records on internet search engines specifically designed to circumvent and bypass what few protective measures currently exist under OPRA**, and all while allowing the requestor to remain cloaked in **anonymity**, should they choose to exercise that option; and

WHEREAS, the pandemic has resulted in a startling and exponential rise in fraud and identity theft, crimes that were already notoriously difficult to investigate, track and prosecute; OPRA, left unchecked and unreformed, continues to add fuel to this already dangerous fire; and

WHEREAS, in a most reprehensible instance in the midst of the pandemic, the unthinkable happened when the young son of a U.S. District Court Judge was senselessly killed by an individual who had managed to compile a dossier of personal information about the Judge including a home address, ushering in the passage of Daniel's Law; and

WHEREAS, while this law as intentioned provides for necessary strides and long overdue amendments to OPRA, the scope of protection provided is critically deficient, the implementation creates challenges for custodians and municipal officials that remain unaddressed by law, with limited channels for guidance, while the vast remainder of the Open Public Records Act continues to be left recklessly unreformed, potentially leaving any officials not covered under Daniel's Law or even, the general public at-large exposed to the whim of any nefarious OPRA requestor lurking in the shadows of those demanding transparency at any cost;

WHEREAS, Assembly Bill No. 4894, introduced January 17, 2019, calling for the creation of a study commission to review OPRA, to-date, has been left negligently stagnant and, to-date the legislative approach to addressing the dangers of OPRA have been fragmented, haphazard and contradictory at best, leading to a dire need for streamlined overhaul and reform, which, at a minimum should include the following:

Immediate creation of a study commission on OPRA.

- **Uniformity under the law: municipalities shall not be subject to any provision under OPRA that the legislature or other state agencies are, by contrast, exempt from.**
- **Provide a universal platform for clear and concise guidance for records custodians. Such guidance should be in place prior to any laws that impact OPRA going into effect.**
- Require that official OPRA Request forms be used in order to be considered valid, including certifications by the requestor of (1) non-conviction of an indictable offense and (2) that information obtained will not be used for profit, solicitation, marketing, or commercial gain, or published as part of a separate internet database or search engine.
- Prohibit OPRA requestors from remaining anonymous.
- Require that requestors provide a State of New Jersey address in order to be valid (OPRA should not apply to out-of-state requests).

- Prohibit requests for commercial purposes.
- Exempt email addresses (also serves as a deterrent to spoofing, phishing and other cyber scams and crimes).
- Exempt information maintained for emergency notification purposes.
- Exempt any information related to minor individuals, disabled persons, and senior citizens as well as classes of citizens who are vulnerable to exploitation of their information.
- Exempt personal identifying information from Motor Vehicle Accident Reports, including driver's license numbers, dates of birth (DOB's), home addresses, VINs and registration/plate numbers, unless the requestor is a subject of the record, or their designated legal or insurance representative.
- Exempt pet license information to a need-to-know basis only (health department, police department, veterinarian of record, hospital, bite victim) to deter rising pet thefts and potential for targeted thefts of non-large-breed dog owners.
- Reaffirm exemption of unlisted telephone numbers, including personal cell phones.
- Exempt property owner names, CAMA Data and reaffirm the exemption of property record cards.
- Protections afforded under Daniel's Law should be afforded to all government officials, employees, volunteers, and members of the general public as the threats from the disclosure of personal information is not unique to those rightfully protected under Daniel's Law.
- Provide a carve out for fee-shifting where a municipality in good faith and without clear guidance through Statute or case law denies a request or redacts information which could reasonably be interpreted as not subject to disclosure.

NOW, THEREFORE BE IT RESOLVED, that the Borough of Midland Park finds it imperative that the New Jersey Senate and Assembly review and reform the New Jersey Open Public Records Act.

BE IT FURTHER RESOLVED, that copies of this resolution are sent to all New Jersey State Legislators, the New Jersey State League of Municipalities, the New Jersey Municipal Clerks' Association, the Bergen County Municipal Clerks' Association, the New Jersey State Association of Chiefs of Police, and the Bergen County Police Chiefs' Association.

Resolution #100-2022 Acme Markets, Inc. Liquor License Renewal For Licensing Period July 1, 2022 to June 30, 2023

WHEREAS, Acme Markets, Inc., has made application for renewal of its Plenary Retail Distribution License # 0235-44-001-007 for mailing address at 250 East Parkcenter Blvd., Boise, ID 83706; and

WHEREAS, the Police Department has performed their investigation as per Borough Code §6-6 and this juncture nothing precludes them from being issued their renewal.

NOW, THEREFORE, BE IT RESOLVED, by the Council of The Borough of Midland Park, that such renewal application for the sale of alcoholic beverages as approved by State Statute and Ordinances of the Borough of Midland Park be and is hereby approved for premises located at 136 Lake Street, Midland Park, NJ, and

BE IT FURTHER RESOLVED, that the Borough Clerk be and is hereby authorized to issue such license, upon payment of any fees, to Acme Markets, Inc., with a mailing address of 250 East Parkcenter Blvd., Boise, ID 83706.

Resolution #101-2022 Arturo Liquor License Renewal For Licensing Period July 1, 2022 to June 30, 2023

WHEREAS, Mariano Allegra, Arturo G Allegra Inc., t/a Arturo's Restaurant, has made application for renewal of its Plenary Retail Consumption w/Broad Package Privilege License # 0235-32-003-010 for premises located at 41 Central Avenue, Midland Park, Bergen County, New Jersey; and

WHEREAS, the Police Department has performed their investigation as per Borough Code §6-6 and at this juncture nothing precludes them from being issued their renewal.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Midland Park that such applications for the sale of alcoholic beverages as approved by State Statute and Ordinances of the Borough of Midland Park be and is hereby approved for premises located at 41 Central Avenue, Midland Park, and;

BE IT FURTHER RESOLVED, that the Borough Clerk be and is hereby authorized to issue such license, upon payment of any fees, to Mariano Allegra, Arturo G Allegra Inc., t/a Arturo's Restaurant, 41 Central Avenue, Midland Park, for the period July 1, 2022 to June 30, 2023.

Resolution #102-2022 Fire Department Liquor License Renewal For Licensing Period July 1, 2022 to June 30, 2023

WHEREAS, Midland Park Fire Company has made application for renewal of its Club License #0235-31-005-001 for premises located at 45 Witte Drive, Midland Park, Bergen County, New Jersey; and **WHEREAS**, the Police Department has performed their investigation as per Borough Code 6-6 and at this juncture nothing precludes them from being issued their renewal.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Midland Park that such applications for the sale of alcoholic beverages as approved by State Statute and Ordinances of the Borough of Midland Park be and is hereby approved for premises located at, 45 Witte Drive, Midland Park, and;

BE IT FURTHER RESOLVED, that the Borough Clerk be and is hereby authorized to issue such license, upon payment of any fees, to Midland Park Fire Company, 45 Witte Drive, Midland Park, for the period July 1, 2022 to June 30, 2023.

Resolution #103-2022 Adopting a Cyber Incident Response Plan

WHEREAS, the Borough of Midland Park has created a Cyber Incident Response Plan using the Municipal Excess Liability Joint Insurance Fund (MELJIF) model documentation to obtain a Tier 1 Certification for Cyber Risk Management Certification; and

WHEREAS, in an attempt to prevent as many cyber related claims as possible, the NJ MEL developed and released to its members the NJ MEL Cyber Risk Management Plan; and

WHEREAS, the Governing Body of Midland Park approved the appended Cyber Incident Response Plan, and the Borough asks that said document to be adopted by the Mayor and Council; and

NOW, THEREFORE, BE IT RESOLVED, that by the Mayor and Council of the Borough of Midland Park, County of Bergen, does here by adopted the Cyber Incident Response Plan.

Introduced by:	Councilman DeBlasio	Seconded by:	Councilman Iannone
Roll Call:	Councilman DeBlasio	Aye	
	Councilman Damiano	Aye	
	Councilman Iannone	Aye	
	Councilman Kruis	Absent	
	Councilwoman DeLuca	Aye	
	Council President Peet	Aye	

RESOLUTIONS:

1. Resolution #097-2022 Bills List

WHEREAS, claims have been submitted to the Borough of Midland Park in the following amounts:

Current Fund ('21)	\$ 34.74
Current Fund	\$ 9,150.53
Capital Fund	\$ 396,436.91
Trust Fund	\$ 250.00
TOTAL:	\$ 405,872.18

WHEREAS, such claims have been listed according to Department and account number with corresponding vouchers to be reviewed and approved by the Finance Committee; and

WHEREAS, the CFO has determined that the funds have been properly appropriated for such purposes and are available, in the Borough of Midland Park and that the claims specified on the schedule attached hereto, following examination and approval by the Finance Committee, be paid and checks issued accordingly; and

WHEREAS, claims have already been paid in the following accounts:

Current	May 15 th Payroll	\$ 211,648.50
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NOW, THEREFORE, BE IT RESOLVED, by the Council President and Council of the Borough of Midland Park that the claims totaling **\$617,520.68** approved and ratified respectively.

Introduced by: Councilman Damiano **Seconded by: Councilwoman DeLuca**

Roll Call:	Councilman DeBlasio	Aye
	Councilman Damiano	Aye
	Councilman Iannone	Aye
	Councilman Kruis	Absent
	Councilwoman DeLuca	Aye
	Council President Peet	Aye

ORDINANCE ON INTRODUCTION:

1. ORDINANCE #16-2022

AN ORDINANCE SUPPLEMENTING THE CODE OF THE BOROUGH OF MIDLAND PARK TO ADD CHAPTER 91 “SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY” TO REGULATE SMALL CELL WIRELESS FACILITIES WITHIN THE BOROUGH RIGHTS-OF-WAY

WHEREAS, the Borough of Midland Park is aware that certain technological developments have made access to its public rights-of-way desirable by certain telecommunications companies for the placement of small cell wireless facilities, including but not limited to, the installation of antennas, small cells and other communication devices and associated equipment (collectively the “Small Cells”); and,

WHEREAS, the Borough 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 which therefore must be managed carefully; and,

WHEREAS, the Federal Telecommunications Act preserves local governments’ ability to manage the public rights-of-way on a competitively neutral and non-discriminatory basis pursuant to 47 U.S.C. 332 (c)(7)(A); 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 public rights-of-way pursuant to N.J.S.A. 48:17-10; 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 approval for the placement of Small Cells on existing poles and the placement of new poles in the public right-of-way; and,

WHEREAS, the erection of new poles and ground level cabinets in the Public Right-of-Way raise significant aesthetic and safety concerns; and,

WHEREAS, the FCC, in its recent order, provides that municipalities can impose aesthetic requirements on Small Cells where said requirement are: 1) reasonable; 2) no more burdensome than

those applied to other types of infrastructure deployment; and 3) published in advance; and,

WHEREAS, the Borough has determined that it is necessary to set forth clear standards in relation to the siting of poles, cabinets, and antennas for the benefit of its citizens and any utilities which use or will seek to make use of said public rights-of-way;

NOW THEREFORE, BE IT ORDAINED as follows:

Section 1. The Revised General Ordinances of the Borough of Midland Park is hereby supplemented by the addition of the following:

Chapter 91 Small Wireless Facilities in the Right-of-Way

§91-1 Definitions.

Unless indicated otherwise in this article, the meanings of terms used herein shall be as follows:

ADMINISTRATIVE REVIEW

Ministerial review of an application by the Designee and Borough Engineer, as preferred by the Borough, to determine whether the issuance of a permit is in conformity with the applicable provisions of this chapter.

ANTENNA

Communications equipment that transmits and/or receives electromagnetic radio frequency 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.

APPLICABLE CODES

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 Borough, including any amendments adopted by the Borough, or otherwise are applicable in the jurisdiction.

APPLICANT

Any person or entity who submits an application under this chapter.

APPLICATION

A written request on a form provided by the Borough.

COLLOCATE or COLLOCATION

To install or mount a small wireless facility in the public right-of-way on an existing support structure, an existing tower, or on an existing pole to which a small wireless facility is attached at the time of the application.

COMMUNICATIONS FACILITY

Collectively, the equipment at a fixed location or locations within the public right-of-way that enables communications services, 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.

COMMUNICATIONS SERVICE

Cable service, as defined in 47 U.S.C. §522(6); information service, as defined in 47 U.S.C. §153(24); or telecommunications service, as defined in 47 U.S.C. §153(53).

COMMUNICATIONS SERVICE PROVIDER

A provider of communications services and includes a cable operator as defined in 47 U.S.C. §522(5).

DECORATIVE POLE

A pole that is specially designed and placed for aesthetic purposes.

DESIGNEE

The person appointed by the Borough to serve as the initial point-of-contact and consultant for the

Borough for all matters pertaining to this chapter, and who may be contracted for professional services.

ELIGIBLE FACILITIES REQUEST

An eligible facilities request as set forth in 47 C.F.R. §1.6100, as that section may be amended from time to time.

FCC

The Federal Communications Commission of the United States.

LAWS

Collectively, any and all federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

ORDINARY MAINTENANCE AND REPAIR

Inspections, testing and/or repair that maintain functional capacity, aesthetic, and structural integrity of a communications facility and/or the associated support structure, pole or tower, that does not require blocking, damaging or disturbing any portion of the public right-of-way.

PERMIT or R.O.W. PERMIT

A written authorization to install, at a specified location(s) in the public right-of-way, a communications facility, tower, or a pole to support a communications facility.

PERMITTEE

An applicant that has received a permit under this chapter.

PERSON

An individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a governmental entity.

POLE

A legally constructed pole, such as a utility, lighting or similar pole made of wood, concrete, metal, or other material, located or to be located within the public right-of-way. A pole does not include a tower or support structure and does not include a pole or structure that supports electric transmission lines.

PROVIDER

A communications service provider or a wireless services provider and includes any person that owns and/or operates within the public right-of-way any communications facilities, wireless facilities, poles built for the sole or primary purpose of supporting communications facilities or towers.

PUBLIC RIGHT-OF-WAY

The area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, or similar purpose. The term does not include a federal interstate highway, state highway, county right-of-way or other areas that are not within the legal jurisdiction, ownership, or control of the Borough.

REPLACE or REPLACEMENT

In connection with an existing pole, support structure or tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this chapter and any other applicable regulations in order to address limitations of the existing structure to structurally support collocation of a communications facility.

SMALL WIRELESS FACILITY

A wireless facility that meets the following qualifications: (i) each antenna could fit within an enclosure of not more than three cubic feet in volume; and (ii) all other wireless equipment associated with the antenna, including the preexisting equipment, is cumulatively no more than 28 cubic feet in volume, (iii) the maximum height of the Small Wireless Facility is 50 feet.

STATE

The State of New Jersey.

SUPPORT STRUCTURE

A structure in the public right-of-way other than a pole or a tower to which a wireless facility is attached at the time of the application.

SURROUNDING STREETScape

The visual elements of a street, including the road, adjoining buildings, street furniture, sidewalk, pedestrian paths and walkways, trees, and open spaces, etc., that combine to form the street's character.

TOWER

Any structure in the public right-of-way built for the sole or primary purpose of supporting a wireless facility. A tower does not include a pole or a support structure.

WIRELESS FACILITY

The equipment at a fixed location or locations in the public right-of-way that enables wireless services. 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 type of a wireless facility.

WIRELESS SERVICES

Any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

§91-2 Access to public right-of-way.

Prior to installing in the public right-of-way any communications facility or any pole built for the sole or primary purpose of supporting a communications facility, or any tower, a person shall enter into a Right-of-Way Use Agreement with the Borough of Midland Park expressly authorizing use of the public right-of-way for the communications facility, pole or tower proposed to be installed.

- A. The term of the Right-of-Way Use Agreement shall not exceed 30 years.
- B. The Right-of-Way Use Agreement authorizes the provider's non-exclusive use of the public right-of-way for the sole purpose of installing, maintaining and operating communications facilities, including any pole built for the sole or primary purpose of supporting the communications facilities and to provide the services expressly authorized in the agreement subject to applicable codes and applicable laws, this chapter and the terms and conditions of the agreement. The agreement authorizes use only of the public right-of-way in which the Borough has an actual interest. It is not a warranty of title or interest in any public right-of-way, and it does not confer on the provider any interest in any particular location within the public right-of-way. No other right or authority is granted except as expressly set forth in the agreement. Nothing herein shall authorize the use of the Borough's poles, towers, support structures, or other structures in the public right-of-way. All use of the Borough's poles, towers, support structures and other structures in the public right-of-way shall require a separate agreement and the payment of separate fees for such use.
- C. The provider shall, at its sole cost and expense, keep and maintain its communications facilities, poles, support structures and towers in the public right-of-way in a safe condition, and in good order and repair.
- D. The provider shall provide insurance and indemnification of the Borough as described in the Right-of-Way Use Agreement. The provider shall provide proof of the following coverages:
 - (1) Worker's Compensation and Employer's Liability insurance in compliance with the State's Worker's Compensation Law, with minimum limit of liability of \$500,000.

- (2) Comprehensive General Liability insurance with minimum limit of liability of \$2,000,000 per occurrence.
- (3) Automobile Liability insurance covering claims for bodily injury and property damage arising from all owned, hired, and non-owned vehicles with minimum limit of liability of \$1,000,000 combined single limit.

§91-3 Right-of-way permit.

- A. No person may construct, maintain, or perform any other work in the Public right-of-way related to communications facilities, poles built for the sole or primary purpose of supporting communications facilities, or towers without first receiving a permit to the extent required under this chapter, and any subsequent permits or authorizations required by applicable laws or the Borough.
- B. The Borough shall not issue a permit unless the applicant, or a provider on whose behalf the applicant is constructing communications facilities, poles or towers, has applied for and received the Right-of-Way Use Agreement required by Section 91-2 of this chapter, or otherwise has a current and valid franchise with the Borough expressly authorizing use of the public right-of-way for the communications facilities, poles or towers proposed in the application, and all applicable fees have been paid.
- C. The provider shall not locate or maintain its communications facilities, wireless facilities, support structure, poles, and towers so as to unreasonably interfere with the use of the public right-of-way by the Borough, by the general public or by other persons authorized to use or be present in or upon the public right-of-way.

§91-4 Location and siting.

- A. Height. No pole shall be taller than 50 feet in height including the antennas or 110% of the height of poles in the surrounding streetscape, whichever is higher.
- B. Distance from curb line. No pole shall be farther than five feet from the curb line.
- C. Location, safety, and aesthetics. No pole shall be erected in the public right-of-way unless it:
 - Is replacing an existing pole; or
 - (1) Is approved by the Borough; or
 - (2) Is located within the public right-of-way; and
 - (3) Is at least 150 linear feet from any other existing pole or proposed pole, which is used to support a small wireless facility; and
 - (4) Is not located in an area with underground utilities except as specified in paragraph I below; and
 - (5) Does not inhibit any existing sight triangles; and
 - (6) Allows adequate room for the public to pass and re-pass across the public right-of-way; and
 - (7) Applicant will heed reasonable requests by the Borough to utilize stealth technology and decorative poles when requested to preserve the existing character and streetscape and minimize impact on surrounding properties by causing the proposed pole and small cell to blend in compatibly with their background.
 - (8) Applicant will heed reasonable requests by the Borough to adjust the final location of poles to avoid pole placement directly in front of a residence or business, or along the frontal boundary lines, and will make reasonable efforts to locate poles along the side boundaries of properties, or in other locations reasonably preferred by the Borough in order to lessen the aesthetic impact of poles in the streetscape, and in the context of adjacent properties, provided said adjustment of final pole location will not have the effect of prohibiting service for said Applicant.
- D. The Borough may require new poles to be decorative poles if appropriate.
- E. Pole mounted antennas are permitted on new and existing poles, provided that each pole mounted antenna:

- (1) Does not exceed three cubic feet in volume; and
 - (2) Is finished and/or painted and 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; and
 - (4) Allows adequate room for the public to pass and repass across the public right-of-way.
- F. Pole mounted cabinets are permitted on new and existing poles, provided that each pole mounted cabinet:
- (1) Does not exceed 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; and
 - (4) Allows adequate room for the public to pass and repass across the public right-of-way.
- G. The Borough may also require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna or pole mounted cabinet.
- H. Ground mounted equipment may be used only to house equipment and other supplies in support of the small wireless facility.
- I. Underground utilities. Unless otherwise agreed to in writing by the Borough or otherwise required by applicable laws, whenever any existing electric utilities or communications facilities are located underground within a public right-of-way, the provider with permission to occupy the same portion of the public right-of-way shall locate its communications facilities underground at its own expense. The Borough may, in its sole discretion, approve above-ground placement of equipment cabinets, pedestals and similar equipment. For facilities or equipment such as wireless facilities that cannot, by their nature, operate unless located above ground, the provider and Borough shall work to find a suitable location for such facilities or equipment, and which may be outside the public right-of-way, only if the Borough owns or otherwise manages said locations and has the authority to make them available to applicant for its communications facilities under similar terms and conditions as locations are made available in the public right-of-way. The applicant shall not be compelled to locate its above ground wireless facilities on private property that is not owned, controlled, or otherwise managed by the Borough.
- J. All wireless equipment associated with the pole or tower, including the wireless equipment associated with the antenna and any preexisting associated equipment shall not be more than 28 cubic feet in volume.
- K. The provider shall, upon completion of construction, provide the Borough with as-built drawings and a map showing the location of the facility and equipment.
- L. Fewest possible new poles. Applicant shall use existing poles, when possible, for the placement of its Small Wireless Facilities and shall minimize the number of new proposed poles in the public right-of-way to the fewest possible to meet the coverage and capacity requirements.
- M. Fewest possible Small Wireless Facilities. Applicant shall minimize the number of new proposed Small Wireless Facilities in the right-of-way to the fewest possible to meet its coverage and capacity requirements.
- N. Collocation. To the maximum extent practical, Applicant shall make its poles available to subsequent and additional applicants who desire to utilize the Right-of-Way to provide Wireless Services. Applicants shall collocate on existing Poles when possible.
- O. Advertising. Small Wireless Facilities and supporting Poles shall not contain any advertising or signage, other than that which is required by the FCC and New Jersey Board of Public Utilities, as well as other applicable state, local and federal laws, and regulations.

- P. Noise. Small Wireless Facilities shall not cause noise that will result in a disturbance to nearby properties or interfere with the right of quiet enjoyment to same or violate the provisions of any applicable noise ordinance.

§91-5 Restoration requirements.

- A. The provider, or its agent or contractor, shall restore, repair and/or replace any portion of the public right-of-way that is damaged or disturbed by the provider's communications facilities, poles, towers, or work in or adjacent to the public right-of-way.
- B. If the provider fails to timely restore, repair, or replace the public right-of-way as required in this section, the Borough or its contractor may do so and the provider shall pay the Borough's costs and expenses in completing the restoration, repair, or replacement.

§91-6 Removal, relocation, and abandonment.

- A. Within 30 days following written notice from the Borough, the provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its communications facilities, poles, support structures or towers within the public right-of-way, including relocation of above-ground communications facilities underground (consistent with the provisions of this chapter), whenever the Borough has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any Borough improvement, the operations of the Borough in, under or upon the public right-of-way, or otherwise is in the public interest. The provider shall be responsible to the Borough for any damages or penalties it may incur as a result of the provider's failure to remove or relocate communications facilities, poles, support structures or towers as required in this section.
- B. The Borough retains the right and privilege to cut or move any communications facility, pole, support structure or tower located within the public right-of-way of the Borough, as the Borough may determine, in its sole discretion, to be necessary, appropriate, or useful in response to any public emergency. If circumstances permit, the Borough shall notify the provider and give the provider an opportunity to move its own facilities prior to cutting or removing the communications facility, pole, support structure or tower. In all cases, the Borough shall notify the provider after cutting or removing the communications facility, pole, support structure or tower as promptly as reasonably possible.
- C. A provider shall notify the Borough of abandonment of any communications facility, pole, support structure or tower 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 provider shall remove its communications facility, pole, support structure or tower at the provider's own expense, unless the Borough determines, in its sole discretion, that the communications facility, pole, support structure or tower may be abandoned in place. The provider shall remain solely responsible and liable for all of its communications facilities, poles, support structures and towers until they are removed from the public right-of-way unless the Borough agrees in writing to take ownership of the abandoned communications facilities, poles, support structures or towers.
- D. If the provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its communications facilities, poles, support structures or towers or remove any of its abandoned communications facilities, poles, support structures or towers as required in this section, the Borough or its contractor may do so and the provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Borough incurs arising from the delay.

§91-7 Fees and charges.

- A. One-time fees and recurring rates. As consideration to the Borough for entering into the Right-of-Way Use Agreement and also as a condition precedent for the issuance of any required permit pursuant to this chapter, the applicant shall pay the required one-time fees and recurring rates as set

forth in this section, and which may be amended or modified from time to time per revision and modification to local, state, and federal laws and regulations. Said fees shall include application or one-time fees and recurring right-of-way occupancy rates.

- B. Permit application escrow. A permit application escrow of \$1,000 per new small wireless facility, including any new pole or support structure, as applicable, and \$500 per alteration, expansion, modification to an existing small wireless facility or pole or support structure, shall be submitted along with each application for a permit and held in escrow to be billed against actual incurred costs. Any expenses above the escrow shall be invoiced to applicant directly and shall be paid by applicant prior to the issuance of any permit.
- C. Reasonable approximation. All one-time fees will be a reasonable approximation of objectively reasonable costs.
- D. 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, replacement, expansion, modification, or alteration of same, with each instance of an upgrade, expansion, alteration, modification, or repair being a separate project subject to a permit application and one-time fees. Ordinary maintenance and repair does not trigger any one-time fees. Designee consulting fee. Applicant shall be responsible for Designee consulting fees which will be a reasonable reflection of objectively reasonable costs, and which shall be first paid to Designee via the permit application escrow. Said fee shall be at the rate of \$350 per hour and shall not exceed three hours per installation, modification, alteration, upgrade or expansion of a small wireless facility or pole or support structure. Said consultation shall supplement Borough personnel with expertise and knowledge not otherwise possessed by Borough agents and officials.
- E. Annual right-of-way occupancy rate shall be \$270 per annum and shall be paid within 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 90 days after the full execution of the applicable Right-of-Way Use Agreement between Borough and applicant.
- F. Annual attachment rate shall be equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Borough for the attachment of each small wireless facility to Borough-owned structures in the public right-of-way. This amount shall be paid within 30 days of issuance of the applicable permit(s) and annually thereafter. The annual rates in this subsection and the annual right-of-way occupancy rate subsection combined shall not exceed \$270 annually per small wireless facility location.
- G. All fees and rates will be applied in a non-discriminatory manner to all communications service providers.
- H. Other fees. The applicant or provider shall be subject to any other generally applicable fees of the Borough or other government body, such as those required for electrical permits, building permits, or street opening permits, which the applicant or provider shall pay as required in the applicable laws, as well as attachment fees for the use of the Borough owned poles, towers, support structures, ducts, conduits or other structures in the public right-of-way, as set forth in attachment agreements authorizing such use.
- I. No refund. Except as otherwise provided in the Right-of-Way Use Agreement, Franchise Agreement or License, the provider may remove its communications facilities, poles, or towers from the public right-of-way at any time, upon not less than 30 days prior written notice to the Borough and may cease paying the Borough any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the public right-of-way. In no event shall a provider be entitled to a refund of any fees paid prior to removal of its communications facilities, poles, or towers.

§91-8 Permit applications.

- A. Permit required. Unless expressly authorized in this chapter or in writing by the Borough, no person may construct, install, modify, expand, alter or maintain in the public right-of-way any communications facilities, poles built for the sole or primary purpose of supporting communications facilities or towers, including the installation or collocation of communications facilities on existing poles, towers, support structures or other structures within the public right-of-way without first receiving a permit. Notwithstanding the foregoing, in the event of an emergency, a provider or its duly authorized representative may work in the public right-of-way prior to obtaining a permit, provided that the provider shall attempt to contact the Borough prior to commencing the work and shall apply for a permit as soon as reasonably possible, but not later than 24 hours after commencing the emergency work. For purposes of this subsection, an “emergency” means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- B. Permit application requirements. The application shall be made by the provider or its duly authorized representative and shall contain the following:
- (1) The applicant’s name, address, telephone number, and email address, including emergency contact information for the applicant.
 - (2) 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.
 - (3) A description of the proposed work and the purposes and intent of the proposed communications facility, pole, tower, support structure or wireless facility (as applicable) sufficient to demonstrate compliance with the provisions of this chapter.
 - (4) If applicable, a copy of the authorization for use of the property from the pole, tower or support structure owner on or in which the communications facility will be placed or attached.
 - (5) Detailed construction drawings regarding the proposed communications facility, pole, tower, support structure or wireless facility (as applicable). Construction drawings shall include, at minimum, a clear delineation of the right-of-way, distance of the proposed communications facility, pole, or support structure from certain existing public right-of-way features such as curb ramps for handicap accessibility pursuant to the Americans With Disabilities Act, sidewalk width and other details standard for these types of telecommunications installations in the public right-of-way.
 - (6) 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.
 - (7) For any new aboveground facilities, accurate visual depictions, or representations. If not included in the construction drawings.
 - (8) The following additional permits, approvals, and authorization, as each is reasonably applicable to the proposed application:
 - a) Street opening permit in accordance with Borough ordinances.
 - b) Construction permit in accordance with Borough ordinances or State codes, as applicable.
 - c) County approval, for sites located in the County right-of-way.
- C. Proprietary or confidential information in application. Applications are public records that may be made publicly available pursuant to the New Jersey Open Public Records Act. 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 Borough shall treat the information as propriety and confidential, subject to the New Jersey Open Public Records Act and the Borough’s determination that the applicant’s request for confidential or proprietary treatment of application

materials is reasonable. The Borough shall not be required to incur any costs to protect the application materials from disclosure, other than the Borough's routine procedures for complying with the New Jersey Open Public Records Act.

- D. Ordinary maintenance and repair. A permit shall not be required for ordinary maintenance and repair. The provider or other person performing the ordinary maintenance and repair shall obtain any other permits required by applicable laws and shall notify the Borough in writing at least 48 hours before performing the ordinary maintenance and repair. Notwithstanding the foregoing, the Borough reserves the right to inspect applicant's small wireless facilities at any time in order to determine if the existing configuration matches the configuration contained in the most recently issued permit, and the applicable Right-of-Way Use Agreement. Applicant shall bear no costs for said inspections. However, if it is determined that an existing small wireless facility is found to be larger than the dimensions specified in the most recently issued applicable permit, then applicant shall be in violation of this chapter. Applicant shall receive notice from the Borough and, upon receipt of such notice, be required to restore the site within ten days to the configuration of the most recently approved permit or retroactively apply for administrative approval for the unapproved modifications. In such instances, Applicant will be responsible for costs and fees incurred by the Borough to perform inspections and review.
- E. Material changes. Unless otherwise agreed to in writing by the Borough, any material changes to an application, as determined by the Borough in its sole discretion, shall be considered a new application for purposes of the time limits set forth in chapter, unless otherwise provided by applicable laws.
- F. Application fees. Unless otherwise provided by applicable laws, all applications pursuant to this chapter shall be accompanied by the required fees.
- G. Effect of permit. A permit from the Borough authorizes an applicant to undertake only the activities in the public right-of-way specified in the application and permit, and in accordance with this chapter and any general conditions included in the permit. A permit does not authorize attachment to or use of existing poles, towers, support structures or other structures in the public right-of-way; a permittee or provider must obtain all necessary approvals from the owner of any pole, tower, support structure or other structure prior to any attachment or use. A permit does not create a property right or grant authority to the applicant to interfere with other existing uses of the public right-of-way.
- H. Duration. Any permit for construction issued under this chapter shall be valid for a period of 365 days after issuance, provided that the period may be extended for up to an additional 180 days upon written request by the applicant (made prior to the end of the initial 365-day period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the applicant.
- I. Batch permit. An applicant may simultaneously submit not more than 25 applications for communications facilities, or may file a single, consolidated application covering such communications facilities, provided that the proposed communications facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Borough. If the applicant files a consolidated application, the applicant shall pay the application fee calculated as though each communications facility were a separate application.

§91-9 Application review.

Pre-application Meeting. Prior to making a formal application with the Borough for use of the public right-of-way, all applicants are advised to meet voluntarily with the Borough Engineer and Designee to review the scope of the applicant's proposal.

- A. All applications made under this chapter shall be expedited so as to comply with the shot clocks set forth in the FCC Order entitled "Accelerating Wireless Broadband Deployment by Removing

- Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barrier to Infrastructure Investment.” WT Docket No. 17-79; WC Docket No. 170-84.
- B. The Designee and Borough Engineer shall review all applications for the placement of new poles and ground level cabinets within the public right-of-way and the placement of pole mounted antennas and pole mounted cabinets within the public right-of-way and advise the Borough whether the application is complete and whether it meets the requirements of this chapter.
- C. Except as otherwise provided by applicable laws, the Borough shall, within 30 days of receiving an application, notify the applicant if the application is incomplete and identify the missing information. The applicant may resubmit the completed application within ten days without additional charge, in which case the Borough shall have 30 days from receipt of the resubmitted application to verify the application is complete, notify the applicant that the application remains incomplete or, in the Borough’s sole discretion, deny the application.
- D. The Borough shall review the application and, if the application conforms with applicable provisions of this chapter, the Borough shall issue the permit, subject to the standard permit requirements published by the Borough.
- E. The Borough shall make its final decision to approve or deny the Application within 60 days for a installation of a small wireless facility to an existing structure, and 90 days to deploy a small wireless facility on a new structure, after the Application is complete (or deemed complete in the event the Borough does not notify the applicant that the application or resubmitted application is incomplete). Review of an application to deploy a facility other than a small wireless facility using a new structure shall be decided within 150 days.
- F. Waiver. The Borough may waive any siting standard set forth in chapter where the applicant demonstrates that strict enforcement of said Standard:
- a) Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or
 - b) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(11); or
 - c) Will violate any requirement set forth by the FCC Order entitled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barrier to Infrastructure Investment.” WT Docket No. 17-79; WC Docket No. 170-84.
- G. The Borough shall advise the applicant in writing of its final decision.

§91-10 Permitted use.

Notwithstanding anything else in the Code of the Borough of Midland Park, the installation of antennas, small cells and other communication devices and associated equipment in the public right-of-way either on existing or new poles are permitted and considered a permitted use if a Right-of-Way Use Agreement and right-of-way permits are obtained pursuant to this chapter.

§91-11 Governance of deployments outside of the public right-of-way.

This chapter 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 the applicable codes and ordinances of the Borough, including the provisions of Section 97-123.12 Wireless Telecommunications Towers and Antennas.

§91-12 Preexisting sites and municipal agreements.

- A. Any communications facilities in the public right-of-way existing at the time of the adoption of the provisions of this chapter, whether or not a Right-of-Way Use Agreement exists or is in force and effect with regard to same, shall be required to comply with the provisions of this chapter.
- B. Any Right-of-Way Use Agreements entered into between the Borough and any provider regarding

communications facilities in the public right-of-way shall be required to conform to the provisions and standards of this chapter. To the extent the provisions of any existing such agreement conflict with this chapter, said provisions, at the discretion of the Borough, shall be replaced and superseded by the applicable terms of this chapter.

§91-13 New Jersey One Call.

In addition to compliance with the applicable provisions of this chapter, prior to the start of any installation of poles, support structures, small wireless facilities or other communications facilities that requires excavation, Applicant shall contact New Jersey One Call at 811 at least three full business days prior to the commencement of work.

§91-14 Violations.

Violation of any of the provisions of this chapter shall be punishable with a civil penalty of \$500 for each violation which continues more than ten days after written notice of such violation is provided to the person or applicant. Each day, after such notice, that a violation occurs or is permitted to exist by the person or applicant, constitutes a separate offense.

Section 2. Repealer.

All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflicts.

Section 3. Severability.

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Midland Park declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

Section 4. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

Introduced by:	Councilman Iannone	Seconded by: Council President Peet
Roll Call:	Councilman DeBlasio	Aye
	Councilman Damiano	Aye
	Councilman Iannone	Aye
	Councilman Kruis	Absent
	Councilwoman DeLuca	Aye
	Council President Peet	Aye

OPEN TO THE PUBLIC:

At this time, **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Resolution #095-2022 **Open Space – The Dairy Street Recreation Area Complex Enhancement.**

No one from the public was present or on the line. The **Mayor** closed the meeting to the public and called for a Roll Call Vote of Council

Roll Call:	Councilman DeBlasio	Aye
	Councilman Damiano	Aye
	Councilman Iannone	Aye
	Councilman Kruis	Absent
	Councilwoman DeLuca	Aye
	Council President Peet	Aye

NEW BUSINESS:

Councilwoman DeLuca announced the Memorial Day Parade will be this Saturday, May 28, 2022 starting at Veterans Field at 9:00 A.M.

PUBLIC COMMENT:

No one was present or no callers on the telephone.

ADJOURNMENT:

There being no response and no further business to address, at 8:58 P.M., on a Motion by **Councilman Damiano**, Seconded by **Councilwoman DeLuca** and carried, **Mayor Shortway** adjourned the meeting.

Respectfully submitted,

Wendy Martin, RMC
Borough Administrator/Clerk