

**BOROUGH OF MIDLAND PARK  
280 GODWIN AVENUE  
MIDLAND PARK NJ 07432  
JUNE 9, 2022**

**8:00 P.M. OPEN PUBLIC MEETING MINUTES**

On June 9, 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 June 9, 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.

|                   |                               |                |
|-------------------|-------------------------------|----------------|
| <b>Roll Call:</b> | <b>Mayor Shortway</b>         | <b>Present</b> |
|                   | <b>Councilman DeBlasio</b>    | <b>Present</b> |
|                   | <b>Councilman Damiano</b>     | <b>Absent</b>  |
|                   | <b>Councilman Iannone</b>     | <b>Present</b> |
|                   | <b>Councilman Kruis</b>       | <b>Present</b> |
|                   | <b>Councilwoman DeLuca</b>    | <b>Absent</b>  |
|                   | <b>Council President Peet</b> | <b>Present</b> |

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

**APPROVAL OF MINUTES:**

A Motion to approve the Minutes of Work Session, Closed Session, and Open Public Meeting from the date of April 14, 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

|                   |                               |               |
|-------------------|-------------------------------|---------------|
| <b>Roll Call:</b> | <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
|                   | <b>Councilman Damiano</b>     | <b>Absent</b> |
|                   | <b>Councilman Iannone</b>     | <b>Aye</b>    |
|                   | <b>Councilman Kruis</b>       | <b>Aye</b>    |
|                   | <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
|                   | <b>Council President Peet</b> | <b>Aye</b>    |

**OPEN TO THE PUBLIC:**

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

**Judith McConville, Kentshire Apartments, 187 Paterson Avenue, Apt 213** – Ms. McConville reported on the conditions of the outside pool at the Kentshire Apartments. She thanked the Borough for helping in this matter.

**Loretta Wattez, Kentshire Apartments, 187 Paterson Avenue, Apt 237** – Ms. Wattez also commented on the conditions at the Kentshire Apartments. She is concerned about the number of rabbits and ducks that are present, especially their droppings in the pool area.

Borough Administrator/Clerk Wendy Martin will follow up with John Torry, Property Maintenance Director and the Kentshire Apartments but noted to Ms. McConville and Ms. Wattez that this is a matter between the residents and the management company.

**Caller 01** – No comment

**Caller 02** – No comment

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 28, 2022 the **Mayor** attended the Memorial Day service at the Firehouse. The parade was cancelled due to weather conditions. On June 2, 2022, the **Mayor** asked **Council President Peet** to attend the Ridgewood Water meeting. The Fire Department hosted a Wetdown to celebrate their new vehicle.

**Councilman Iannone**

**Public Safety – Police/Property Maintenance/Personnel**

**Councilman Iannone** detailed in the month of May the **Police Department** had 784 total calls for service: 226 calls were categorized as public service and 54 motor vehicle summonses were made. The **Councilman** read John Torry's report into the Minutes for **Property Maintenance**. Mr. Torry continues to investigate and follow up on the complaints filed at the Kentshire Apartments. **Councilman Iannone** also reported there was progress for **Personnel**.

**Councilman Kruis**

**Planning Board/Building Dept/Fire Prevention/OEM**

**Councilman Kruis** stated the year-to-date figures for **Fire Prevention** are 523 inspections that needed to be fulfilled. As of June 2022, 202 of these reviews have been completed. On June 2, 2022, at Kean University, Mr. Rau attended the required Homeland Security and Fire Safety class. Cliffside Park hosted the Bergen County Fire Prevention conference on June 8, 2022. The **Councilman** updated the inventory totals for the Borough's PPE and they were at satisfactory levels. For **OEM**, reports were read for the amount of monies the Borough had received from FEMA, the hurricanes, and storms that occurred. The next **Planning Board** meeting will be on June 20, 2022. The **Building Department** has reported high volumes of inspections and applications.

**Councilwoman DeLuca**

**Public Safety – Fire/Ambulance/Library**

In the absence of **Councilwoman DeLuca**, **Council President Peet** read the **Councilwoman's** report. On June 8, 2022, **Council President Peet** and **Councilwoman DeLuca** attended the 2022 NJLA/NJASL Amy Job Partnership Program recognition dinner where the Library's Emily "Miss Emily" Myhren, the Children's Librarian, received her award after being nominated for her distinguished service in Midland Park. The next **Library Board** meeting will be held on June 15, 2022. The **Fire Department's** wetdown celebrating the new Engine 532 was well attended on June 4, 2022. The Captain's report from the June 6, 2022 meeting for the **Ambulance Corps** stated total of 64 calls and 500 miles. There were 15 mutual aid calls out and 1 call in for Midland Park.

**John Lazzari, Captain of the Borough of Midland Park Ambulance Corps, 226 Paterson Avenue** – Capt. Lazzari stated he sent **Councilwoman DeLuca** a letter informing her of the current ratio the Ambulance Corps calls out to in. This past month, there were 15 assists out to other towns and 1 in. The average mutual aid calls per month were 1 to 3 call per month. Since last summer, the number of calls has increased significantly. In October of 2021, there were 26 mutual aid calls. The mutual aid partners, which include Wyckoff, Waldwick, Ho-Ho-Kus, and Franklin Lakes, all work together and assist each other's towns. Hawthorne and Fair Lawn have increased their requests for mutual aid in from Midland Park due to the fact that Fair Lawn ambulances bill their patients for their services. Many towns are refusing to assist Fair Lawn because of the distance traveled and time that is required for these support calls. The Ambulance Corps wanted the Mayor and Council to be aware of their concerns and the shortage of volunteers within their organization.

**Steven Holder, Borough of Midland Park Ambulance Corps, 6 Baldin Drive** – no comment.

**Council President Peet** **Board of Health/ Board of Education/Ridgewood Water**  
**Council President Peet** stated at the June 7, 2022 **Board of Education** meeting, the "teachers of the year" along with the 2022 retirees were honored. The staff at the **Board of Health** has been working endless hours during the COVID-19 pandemic. A letter from Brighton Gardens Assisted Living in Saddle Brook, New Jersey wrote to the Northwest Bergen Regional Health Commission and thanked them for their caring service. The **Council President** attended a presentation hosted by the **Ridgewood Water**. They received aid from the State \$2.8 million for the purification of the PFAS in our waters. There will be a roundtable of meetings consisting of Mayors, Administrators, and elected officials to discuss the coordination of road openings and the removal of lead from resident's water pipes.

**Councilman DeBlasio** **Recreation/Information Technology/Municipal Alliance**  
**Councilman DeBlasio** summarized his meeting with Kathy LaMonte, Director of the **Recreation Department**. Summer Camp registration enrollment numbers are increasing. Some of the age groups have a waiting list already. Summer softball and baseball field schedule has been completed. The background checks for football and cheerleading are almost completed. Unfortunately, due to inclement weather, the Memorial Day parade was cancelled but the ceremony for our veterans was still held. For **Information Technology**, **Councilman DeBlasio** stated Phil Scaglione, Information Technology Director, continues to install the new SDL system for the Building Department. In the Somerset County government, hackers were able to vandalize their system. Mr. Scaglione continues to diligently monitor any outside hacking. The **Councilman** did not receive any information from **Municipal Alliance** on their next meeting.

**Councilman Damiano** **Finance/Public Works/Chamber of Commerce/Economic Development**  
In the absence of **Councilman Damiano**, **Councilman Iannone** reported progress for **Finance, Chamber of Commerce, and Economic Development**. In a monthly report, Matthew Tauber, Superintendent of **Department of Public Works** updated the **Councilman** on the Borough's projects. The 2021 Road Resurfacing project has been completed. The Sanitary Sewer project, where 29,346 linear feet of pipes have been cleaned. Pet waste stations have been erected at the Borough's local parks. And currently, the solar powered lights are being installed by the Department of Public Works staff at the Recreation field. The Godwin Avenue ADA construction ramp project has begun by the bid awarded construction project on June 6, 2022 and is progressing. A new 2022 John Deere front loader has replaced the 2006 front loader machine.

**ADMINISTRATOR'S REPORT:**

Borough Administrator/Clerk Wendy Martin reported the mandatory annual Financial Disclosure

Statements have been filed by the appropriate officials. The Primary Election went smoothly on June 7, 2022. Thank you to Deputy Clerk Mari Margiotta and the Board Workers for all their efforts. New procedures have been implemented by the County of Bergen Board of the Elections. At the end of the night of elections, and all materials and equipment are returned to the Borough, a representative from the Borough, (this year it was Ms. Martin) must accompany the Police Officer to Hackensack and deliver the Election material and results. The Clerk's Office's day starts at 4:00 A.M. and continues past 10:00 P.M. The Godwin Avenue construction project is progressing with the ADA ramps almost completed. Ms. Martin announced that Borough Deputy Clerk, Mari Margiotta has successfully acquired the Registered Municipal Clerks Certificate.

**ORDINANCES ON FINAL:**

**1. ORDINANCE #14-2022**

**“AN ORDINANCE TO AMEND CHAPTER 34 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED, ‘ZONING’”. (Soil Movement, Patios, Walkways and Retaining Walls & Paving of Commercial Parking Lots)**

**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 34 of the Code of the Borough of Midland Park, Zoning, §34-13.7, Soil Movement, paragraph c, Application Requirements, subparagraph 1(g), is hereby amended to read as follows:

(g) Such fee as may be established by Chapter 40, Fees and Charges: Land Development Regulations, of the Borough Code.

**Section 2.**

Chapter 34 of the Code of the Borough of Midland Park, Zoning, §34-13.7, Soil Movement, paragraph c, Application Requirements, subparagraph 1, is hereby amended to add the following:

(h) An application for a soil movement permit shall be made on the application form attached to this Ordinance as Exhibit A.

**Section 3.**

Chapter 34 of the Code of the Borough of Midland Park, Zoning, §34-4.5, Required Conditions, is hereby amended to add the following new paragraph:

(j) Patios, Walkways and Retaining Walls.

1. A Zoning Permit shall be required for the construction of any patio, walkway or retaining wall. An application for such permit shall be made to the Borough Code Official.

2. The fee for the issuance of a Zoning Permit for such uses shall be as set forth in Chapter 40, Fees and Charges: Land Development Regulations.

**Section 4.**

Chapter 34 of the Code of the Borough of Midland Park, Zoning, Section 34-5.1, Use Regulations, is hereby amended to add the following new paragraph:

(e) Patios, Walkways and Retaining Walls.

1. A Zoning Permit shall be required for the construction of any patio, walkway or retaining wall. An application for such permit shall be made to the Borough Code Official.

2. The fee for the issuance of a Zoning Permit for such uses shall be as set forth in Chapter 40, Fees and Charges: Land Development Regulations.

**Section 5.**

Chapter 34 of the Code of the Borough of Midland Park, Zoning, is hereby amended to add the following new Section:

§34-13.14 Paving of Commercial Parking Lots.

a. A permit shall be required for the paving or repaving of a commercial parking lot. An application for such permit shall be made to the Borough Code Official on the application form attached to this Ordinance as Exhibit B.

b. The fee for the issuance of a Zoning Permit for such uses shall be as set forth in Chapter 40, Fees and Charges: Land Development Regulations.

Section 6. 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 7. 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 8. Effective Date.

This Ordinance shall take effect immediately upon final passage and publication as provided by law. Borough Administrator/Clerk Wendy Martin updated the **Mayor** and **Council** on the status of the Ordinance #14-2022. The Planning Board did not hold its meeting on May 16, 2022. The Ordinance must be carried until the next Governing Body meeting. No vote is required.

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

**2. 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**

**Commented [DN1]:** Does this require that one of the conditions of collocation is that a small wireless facility must be attached to the pole already? i.e., a small wireless facility can't be installed/mounted on an "unoccupied" existing support structure?

**Commented [PR2R1]:** Hi David. Thanks for your feedback!

"Collocate" carries a specific meaning in the wireless industry: installing facilities where there are already facilities present (it is occasionally used to mean any installation of antennas on an existing structure, but this is atypical). The federal definition in 47 CFR 1.61000 aligns with this. The state definition (NJSA 40:55D-46.2) loosely conforms.

It does not affect the use of existing poles for small cells. Carriers can install small cells on existing poles. It is actually the preferred deployment method per this ordinance (sec. 91-4), and in general practices: That is, use existing infrastructure when possible. Use new poles only when nothing else will suffice.

The key reason for this definition inclusion is section 91-4(N), whereby carriers, to the extent possible based on technical and structural limitations, will make their new poles and infrastructure available for other carriers to collocate on – Build poles, if needed. But make sure the poles can support at least 1 other carrier, if technically possible.

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**

Commented [DN3]: right-of-way

Commented [PR4R3]: Thank you. Correction made.

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.

**Commented [DN5]:** It may be worthwhile adding "sidewalk" to this list as well.

**Commented [PR6R5]:** Good suggestion. Added to round out streetscape description

- (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:
- (1) Is replacing an existing pole; or
  - (2) Is approved by the Borough; or
  - (3) Is located within the public right-of-way; and
  - (4) Is at least 150 linear feet from any other existing pole or proposed pole, which is used to support a small wireless facility; and
  - (5) Is not located in an area with underground utilities except as specified in paragraph I below; and
  - (6) Does not inhibit any existing sight triangles; and
  - (7) Allows adequate room for the public to pass and re-pass across the public right-of-way; and
  - (8) 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.
  - (9) 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

**Commented [DN7]:** Just want to make sure this doesn't conflict with the definition of "small wireless facility" which establishes a maximum height of 50 feet.

**Commented [PR8R7]:** I do not recall whom at the moment, but the 45' height was requested by someone with the borough a few months back at a meeting I attended- may have been a council member or official. So I tentatively entered it into the forwarded draft with the intention of discussing it down the line before adoption.

You are correct: the federal definition of small wireless facility is < 50' in height, which is matched by our own ordinance definition

A 45' limit can be entered in the design section: carriers typically try to work with towns since they are reliant partners in lane closures, permit issuance and the like. Technically, the definition of small cell can be 50' but 45' can be the ROW height limitation here.

There is no specific regulation prohibiting this disparity. But, carriers can challenge the height limitation if they need a 50' pole for any reason, and would most likely prevail as limiting height to under 50' would then be prohibitive of service, which is the big no-no per the FCC. In short, local governments can create more restrictive design specs than the FCC small cell definition, but they may be challenged.

I will revert it to 50', per our original ordinance template, and in the meantime determine who requested 45' and reach out and explain why 50' is the most sensible and compliant height limit.

- (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.

**Commented [DN9]:** Just confirming that the "under similar terms and conditions" language here covers that Planning Board/Zoning Board of Adjustment approval would **not** be required

**Commented [PR10R9]:** Exactly.

Due to the 2018 FCC small cell order, and it being upheld in a major 2020 US appeals court decision, carriers can use the rights-of-way for small cells, and approval cannot be discretionary

...well, approval can technically follow a discretionary process, for paperwork purposes and such, but the end result still has to be approval and within shot clock timeframes, else it would be prohibitive of service and in violation of federal regulations

This typically results in excess time and effort expenditure for a foregone conclusion, which most jurisdictions prefer to avoid, unless they have an especially anti-5G constituency, in which case some may want the process on record so they can say at least they tried.

In most cases, a thorough administrative process is the way to go, with the one instance of public notice and involvement being the council meeting where a resolution is introduced which enables the mayor or BA to enter into a ROW access agreement.

However, we are careful to avoid making such notice for an ROW agreement resolution come off as notice for a zoning board or planning board application, which gives the public a genuine opportunity to voice disapproval, which is weighed against positive/negative criteria and such. Here, it's more like: Here are the small cells, here is the one time notice for the public (website, newspaper, GIS map etc), just so you know where they are going. Safety issues can be raised, but not much beyond that.

Nonetheless, towns can make lots of adjustments as to specific siting (usually within 100' or so) and location, based on ADA compliance, distance to nearby residential windows, proximity to sight triangles, ROW obstructions, proximity to power lines, and other reasons based on ROW conditions. Hoplite performs a full analysis of every small cell application and compares it against well over a dozens of these types of criteria.

But to circle back to your question: If the borough requests that a carrier utilize borough owned land that is not in the ROW vs. a selected carrier location in the ROW, that land would need to be made available on the same terms as the small cell ordinance. This could, of course, cause issues with the standard process for licensing, leasing and bidding out unused public land, which the borough could bypass citing federal preemption. This has not been vetted in the court system, so is untested thus far in NJ. Might also raise master plan questions in regard to use of public lands and open space, which are bypassed entirely when small cells are in the ROW due to strict federal preemption.

**Commented [DN11]:** "make"

- 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.
- E. 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.
- F. 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.
- G. 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.
- H. All fees and rates will be applied in a non-discriminatory manner to all communications service providers.
- I. 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.
- J. 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 no 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.**

- A. 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.
- B. 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.

- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.

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 #16-2022.

**Caller 01: No comment**

**Caller 02: No comment**

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #16-2022.

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

|                   |                               |               |
|-------------------|-------------------------------|---------------|
| <b>Roll Call:</b> | <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
|                   | <b>Councilman Damiano</b>     | <b>Absent</b> |
|                   | <b>Councilman Iannone</b>     | <b>Aye</b>    |
|                   | <b>Councilman Kruis</b>       | <b>Aye</b>    |
|                   | <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
|                   | <b>Council President Peet</b> | <b>Aye</b>    |

**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 #106-2022 Void AP Check**

**WHEREAS**, due to inclement weather forecasted the day of our Memorial Day Parade on Saturday, May 28, 2022 the event was cancelled;

**WHEREAS**, the CFO issued the following payment for distribution on the day of event, and due to the cancellation, the following check needs to be voided:

Military Transport Association    5/26/22    CK # 19148    \$500.00

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Midland Park that the

above check be voided.

**Resolution #107-2022 Authorizing Tax Collector to Prepare and Mail Estimated Tax Bills in Accordance with P.L. 1994, c. 72**

**WHEREAS**, the Recreation Director, Kathy LaMonte, received the following camp registration refund request due to enrollment into the wrong town camp program;

**WHEREAS**, a refund check is being requested to be made out to the following resident for the weeks previously registered for before the start of camp:

Victoria Kida 77 Highland Ave, Midland Park, NJ 07432 \$840.00

(6 wks plus extended days registration for Charlotte Kida)

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Midland Park that the Certified Finance Officer will issue a check for the above refund amount.

**Resolution #108-2022 Camp Refund**

**WHEREAS**, the Bergen County Board of Taxation is unable to certify Midland Park's tax rate at this time and the Borough of Midland Park Tax Collector will be unable to mail the Borough's 2022 tax bills on a timely basis; and

**WHEREAS**, the Borough of Midland Park Tax Collector in consultation with the Borough of Midland Park Chief Financial Officer has computed an estimated tax levy in accordance with N.J.S.A. 54:4-66.3, and they have both signed a certification showing the tax levies for the previous year, the 2022 estimated tax rates and the range of permitted estimated tax levies.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing body of the Borough of Midland Park, County of Bergen, State of New Jersey, as follows:

1. The Borough of Midland Park Tax Collector is hereby authorized and directed to prepare, and issue estimated tax bills for the Borough of Midland Park for the third quarter installment of 2022 taxes.

The entire estimated tax levy for 2022 is hereby set at \$35,772,905.71 with 2022 estimated tax range between 95% and 105% set as 3.299

2. In accordance with law the third installment of 2022 taxes shall not be subject to interest until the later of August 10 or the twenty-fifth calendar day after the date the estimated tax bills were mailed. The estimated tax bills shall contain a notice specifying the date on which interest may begin to accrue.

**Resolution #109-2022 Legends Restaurant and Pub Inc. Liquor License Renewal for Licensing Period July 1, 2022 to June 30, 2023**

**WHEREAS**, Legends Restaurant and Pub Inc., has made application for renewal of its Plenary Retail Consumption # 0235-33-002-018 for premises located at 11 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 11 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 Legends Restaurant and Pub Inc., 11 Central Avenue, Midland Park, for the period July 1, 2022 to June 30, 2023.

**Resolution #110-2022 Amend Resolution #039-2022 Appoint Special Legal Council**

**WHEREAS**, there was a need for special legal counsel in connection with the *in rem* Foreclosures; and

**WHEREAS**, annexed is the Proposal to Perform *in rem* Foreclosures in the amount of \$5,000.00; and

**WHEREAS**, the Proposal was increased by \$2,500.00 by the title search company due to a complicated tax search; and

**WHEREAS**, the Proposal has increased by \$1,000.00 due to unanticipated legal fees; and

**NOW, THEREFORE, BE IT RESOLVED**, that Keith A. Bonchi, Esq., be and is hereby appointed as Special Legal Counsel for an amended amount not to exceed \$8,500.00.

**BE IT FURTHER RESOLVED**, that the Mayor and Borough Clerk be and are hereby authorized to execute a Professional Services Agreement in connection with this matter.

**Introduced by: Councilman Kruis                      Seconded by: Councilman Iannone**

|                   |                               |               |
|-------------------|-------------------------------|---------------|
| <b>Roll Call:</b> | <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
|                   | <b>Councilman Damiano</b>     | <b>Absent</b> |
|                   | <b>Councilman Iannone</b>     | <b>Aye</b>    |
|                   | <b>Councilman Kruis</b>       | <b>Aye</b>    |
|                   | <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
|                   | <b>Council President Peet</b> | <b>Aye</b>    |

**RESOLUTIONS:**

**1. Resolution #105-2022 Bills List**

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

|                    |                      |
|--------------------|----------------------|
| Current Fund ('21) | \$ 1,161.45          |
| Current Fund       | \$ 290,481.26        |
| Dog Fund           | \$ 326.40            |
| Capital Fund       | \$ 19,456.84         |
| Trust Fund         | \$ 1,547.79          |
| <b>TOTAL:</b>      | <b>\$ 312,973.74</b> |

**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 30 <sup>th</sup> Payroll  | \$ 216,363.65 |
| Current | Heavy Iron Svc-fraud ck rplcd | \$ 2,693.72   |
| Current | PSEG – manual check           | \$ 7,914.10   |
| Current | Purchase Power – manual check | \$ 500.00     |

**NOW, THEREFORE, BE IT RESOLVED**, by the Council President and Council of the Borough of Midland Park that the claims totaling **\$540,445.21** approved and ratified respectively.

**Introduced by: Councilman DeBlasio                      Seconded by: Councilman Kruis**

|                   |                               |               |
|-------------------|-------------------------------|---------------|
| <b>Roll Call:</b> | <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
|                   | <b>Councilman Damiano</b>     | <b>Absent</b> |
|                   | <b>Councilman Iannone</b>     | <b>Aye</b>    |
|                   | <b>Councilman Kruis</b>       | <b>Aye</b>    |
|                   | <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
|                   | <b>Council President Peet</b> | <b>Aye</b>    |

**2. Resolution #111-2022 Reappointing Wendy Martin to the Position of Borough Clerk and Establishment of Tenure**

**WHEREAS**, in accordance with N.J.S.A 40a:9-133 et seq, Wendy Martin was duly appointed and confirmed to the position of Borough Clerk for a three (3) year term with an effective date of June 13, 2019; and

**WHEREAS**, Wendy Martin is and has been certified as a Registered Municipal Clerk since April 3, 2019 and has satisfied the continuing education requirements for said certification; and

**WHEREAS**, the Mayor and Council is desirous of reappointing Wendy Martin, RMC as Borough Clerk for the Borough of Midland Park effective June 13, 2022; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Midland Park, County of Bergen, State of New Jersey as follows:

1. Wendy Martin, RMC, is hereby reappointed to the position of Borough Clerk for the Borough of Midland Park.
2. Wendy Martin, RMC, is and has upon this reappointment attained tenure pursuant to N.J.S.A. 40A:9-133, et seq.

|                       |                               |                     |                               |
|-----------------------|-------------------------------|---------------------|-------------------------------|
| <b>Introduced by:</b> | <b>Councilman Iannone</b>     | <b>Seconded by:</b> | <b>Council President Peet</b> |
| <b>Roll Call:</b>     | <b>Councilman DeBlasio</b>    | <b>Aye</b>          |                               |
|                       | <b>Councilman Damiano</b>     | <b>Absent</b>       |                               |
|                       | <b>Councilman Iannone</b>     | <b>Aye</b>          |                               |
|                       | <b>Councilman Kruis</b>       | <b>Aye</b>          |                               |
|                       | <b>Councilwoman DeLuca</b>    | <b>Absent</b>       |                               |
|                       | <b>Council President Peet</b> | <b>Aye</b>          |                               |

**ORDINANCE ON INTRODUCTION:**

**1. ORDINANCE #17-2022**

**“AN ORDINANCE AMENDING CHAPTER 34 ZONING, SECTION 16, OFF-STREET PARKING AND LOADING TO ADD 34-16.7 INSTALLATION OF ELECTRIC VEHICLE SUPPLY/SERVICE EQUIPMENT (EVSE) AND MAKE-READY PARKING SPACES”**

This Ordinance sets forth procedures for the installation of Electric Vehicle Supply/Service Equipment (EVSE) and Make-Ready parking spaces and establishes associated regulations and other standards within the Borough of Midland Park of the County of Bergen.

**WHEREAS**, supporting the transition to electric vehicles contributes to Borough of Midland Park's commitment to sustainability and is in the best interest of public welfare; and

**WHEREAS**, installation of EVSE and Make-Ready parking spaces encourages electric vehicle adoption; and

**WHEREAS**, the Borough of Midland Park encourages increased installation of EVSE and Make Ready parking spaces; and

**WHEREAS**, adoption of this ordinance supports the State of New Jersey's goals to reduce air pollutants and greenhouse gas emissions from the transportation sector as outlined and supported by various programs related to NJ's 2019 Energy Master Plan, Global Warming Response Act (P.L.2007, c.112 (C.26:2C-37 et al.)), and EV Law (P.L. 2019, c. 362); and

**WHEREAS**, P.L. 2021, c.171, signed into law on July 9, 2021, requires EVSE and Make-Ready parking spaces be designated as a permitted accessory use in all zoning or use districts and establishes associated installation and parking requirements; and

**WHEREAS**, adoption of this ordinance will support the Master Plan of Borough of Midland Park adopted in concurrence with P.L. 1975 c. 291, s. 1 eff. Aug. 1, 1976, and is consistent with goals of the Master Plan; and

**WHEREAS**, the Borough of Midland Park is amending the Zoning Ordinance to establish standards and regulations for the safe and efficient installation of EVSE and Make-Ready parking spaces at appropriate locations.

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Midland Park, County of Bergen, State of New Jersey as follows:

**FIRST: ELECTRIC VEHICLE SUPPLY/SERVICE EQUIPMENT**

**A. Purpose**

The purpose of this ordinance is to promote and encourage the use of electric vehicles by requiring the safe and efficient installation of EVSE and Make-Ready parking spaces through municipal parking regulations and other standards. EVSE and Make-Ready parking spaces will support the State's transition to an electric transportation sector, reducing automobile air pollution, greenhouse gas emissions, and storm water runoff contaminants. The goals are to:

1. Provide adequate and convenient EVSE and Make-Ready parking spaces to serve the needs of the traveling public.
2. Provide opportunities for residents to have safe and efficient personal EVSE located at or near their place of residence.
3. Provide the opportunity for non-residential uses to supply EVSE to their customers and employees.
4. Create standard criteria to encourage and promote safe, efficient, and cost-effective electric vehicle charging opportunities in all zones and settings for convenience of service to those that use electric vehicles.

**B. Definitions**

Certificate of occupancy: The certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act, and the regulations. See "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and regulations adopted pursuant thereto.

Charging Level: The amount of voltage provided to charge an electric vehicle varies depending on the type of EVSE as follows:

1. Level 1 operates on a fifteen (15) to twenty (20) amp breaker on a one hundred twenty (120) volt AC circuit.
2. Level 2 operates on a forty (40) to one hundred (100) amp breaker on a two hundred eight (208) or two hundred forty (240) volt AC circuit.
3. Direct-current fast charger (DCFC) operates on a sixty (60) amp or higher breaker on a four hundred eighty (480) volt or higher three phase circuit with special grounding equipment. DCFC stations can also be referred to as rapid charging stations that are typically characterized by industrial grade electrical outlets that allow for faster recharging of electric vehicles.

Electric vehicle: Any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; and operates either partially or exclusively using an electric motor powered by an externally charged on-board battery.

Electric Vehicle Supply/Service Equipment or (EVSE): The equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, point of sale equipment, and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. "EVSE" may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. "EVSE" is synonymous with "electric vehicle charging station."

Make-Ready Parking Space: means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle

Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a "plug and play" basis. "Make-Ready" is synonymous with the term "charger ready," as used in P.L.2019, c.362 (C.48:25-1 et al.).

Private EVSE: EVSE that has restricted access to specific users (e.g., single and two-family homes, executive parking fleet parking with no access to the general public).

Publicly-accessible EVSE: EVSE that is publicly available (e.g., park & ride, public parking lots and garages, on-street parking, shopping center parking, non-reserved parking in multi-family parking lots, etc.).

### C. Approvals and Permits

1. An application for development submitted solely for the installation of EVSE or Make-Ready parking spaces shall be considered a permitted accessory use and permitted accessory structure in all zoning or use districts and shall not require a variance pursuant to C.40:55D-70.
2. EVSE and Make-Ready Parking Spaces installed pursuant to Section D. below in development applications that are subject to site plan approval are considered a permitted accessory use as described in 1. above.
3. All EVSE and Make-Ready parking spaces shall be subject to applicable local and/or Department of Community Affairs permit and inspection requirements.
4. The zoning officer shall enforce all signage and installation requirements described in this ordinance. Failure to meet the requirements in this ordinance shall be subject to the same enforcement and penalty provisions as other violations of the Borough of Midland Park's land use regulations.
5. An application for development for the installation of EVSE or Make-Ready spaces at an existing gasoline service station, an existing retail establishment, or any other existing building shall not be subject to site plan or other land use board review, shall not require variance relief pursuant to C.40:55D-1 et seq. or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the zoning officer, provided the application meets the following requirements:
  - a. the proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;
  - b. all other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and
  - c. the proposed installation complies with the construction codes adopted in or promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.
6. An application pursuant to Section 5. above shall be deemed complete if:
  - a. the application, including the permit fee and all necessary documentation, is determined to be complete,
  - b. a notice of incompleteness is not provided within 20 days after the filing of the application, or
  - c. a one-time written correction notice is not issued by the zoning officer within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.

7. EVSE and Make-Ready parking spaces installed at a gasoline service station, an existing retail establishment, or any other existing building shall be subject to applicable local and/or Department of Community Affairs inspection requirements.
8. A permitting application solely for the installation of electric vehicle supply equipment permitted as an accessory use shall not be subject to review based on parking requirements.

**D. Requirements for New Installation of EVSE and Make-Ready Parking Spaces**

1. As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed-use development, the developer or owner, as applicable, shall:
  - a. prepare as Make-Ready parking spaces at least 15 percent of the required off-street parking spaces, and install EVSE in at least one-third of the 15 percent of Make-Ready parking spaces;
  - b. within three years following the date of the issuance of the certificate of occupancy, install EVSE in an additional one-third of the original 15 percent of Make-Ready parking spaces; and
  - c. within six years following the date of the issuance of the certificate of occupancy, install EVSE in the final one-third of the original 15 percent of Make-Ready parking spaces.
  - d. Throughout the installation of EVSE in the Make-Ready parking spaces, at least five percent of the electric vehicle supply equipment shall be accessible for people with disabilities.
  - e. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
2. As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in 1. above shall:
  - a. Install at least one Make-Ready parking space if there will be 50 or fewer off-street parking spaces.
  - b. Install at least two Make-Ready parking spaces if there will be 51 to 75 off-street parking spaces.
  - c. Install at least three Make-Ready parking spaces if there will be 76 to 100 off-street parking spaces.
  - d. Install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities if there will be 101 to 150 off-street parking spaces.
  - e. Install at least four percent of the total parking spaces as Make-Ready parking spaces, at least five percent of which shall be accessible for people with disabilities, if there will be more than 150 off-street parking spaces.
  - f. In lieu of installing Make-Ready parking spaces, a parking lot or garage may install EVSE to satisfy the requirements of this subsection.
  - g. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
  - h. Notwithstanding the provisions of this Section, a retailer that provides 25 or fewer off-street parking spaces or the developer or owner of a single-family home shall not be required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

**E. Minimum Parking Requirements**

1. All parking spaces with EVSE and Make-Ready equipment shall be included in the calculation of minimum required parking spaces, pursuant to Section 34.16.
2. A parking space prepared with EVSE or Make-Ready equipment shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This shall result in a reduction of no more than 10 percent of the total required parking.
3. All parking space calculations for EVSE and Make-Ready equipment shall be rounded up to the next full parking space.
4. Additional installation of EVSE and Make-Ready parking spaces above what is required in Section D. above may be encouraged but shall not be required in development projects.

**F. Reasonable Standards for All New EVSE and Make-Ready Parking Spaces**

1. Location and layout of EVSE and Make-Ready parking spaces is expected to vary based on the design and use of the primary parking area. It is expected flexibility will be required to provide the most convenient and functional service to users. Standards and criteria should be considered guidelines and flexibility should be allowed when alternatives can better achieve objectives for provision of this service.
2. Installation:
  - a. Installation of EVSE and Make-Ready parking spaces shall meet the electrical subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.16.
  - b. Each EVSE or Make-Ready parking space that is not accessible for people with disabilities shall be not less than 9 feet wide or 18 feet in length. Exceptions may be made for existing parking spaces or parking spaces that were part of an application that received prior site plan approval.
  - c. To the extent practical, the location of accessible parking spaces for people with disabilities with EVSE and Make Ready equipment shall comply with the general accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
  - d. Each EVSE or Make-Ready parking space that is accessible for people with disabilities shall comply with the sizing of accessible parking space requirements in the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
3. EVSE Parking:
  - a. Publicly-accessible EVSE shall be reserved for parking and charging electric vehicles only. Electric vehicles shall be connected to the EVSE.
  - b. Electric vehicles may be parked in any parking space designated for parking, subject to the restrictions that would apply to any other vehicle that would park in that space.
  - c. Public Parking. Pursuant to N.J.S.A. 40:48-2, publicly-accessible EVSE parking spaces shall be monitored by the municipality's police department and enforced in the same manner as any other parking. It shall be a violation of this Section to park or stand a non-electric vehicle in such a space, or to park an electric vehicle in such a space when it is not connected to the EVSE. Any non-electric vehicle parked or standing in a EVSE parking space or any electric vehicle parked and not connected to the EVSE shall be is subject to fine and/or impoundment of the offending vehicle as described in the general penalty provisions of this Municipal Code or Section 7-14. Signage indicating the penalties for violations shall comply with Section 5. below. Any vehicle parked in such a space shall make the appropriate payment for the space and observe the time limit for the underlying parking area, if applicable.
  - d. Private Parking. The use of EVSE shall be monitored by the property owner or designee.

**4. Safety**

- a. Each publicly-accessible EVSE shall be located at a parking space that is designated for electric vehicles only and identified by green painted pavement and/or curb markings, a green painted charging pictograph symbol, and appropriate signage pursuant to Section 5. below.
- b. Where EVSE is installed, adequate site lighting and landscaping shall be provided in accordance with Borough of Midland Park's ordinances and regulations.
- c. Adequate EVSE protection such as concrete-filled steel bollards shall be used for publicly-accessible EVSE. Non-mountable curbing may be used in lieu of bollards if the EVSE is setback a minimum of 24 inches from the face of the curb. Any stand-alone EVSE bollards should be 3 to 4-feet high with concrete footings placed to protect the EVSE from accidental impact and to prevent damage from equipment used for snow removal.
- d. EVSE outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted and shall contain a cord management system as described in e. below. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designated and located as to not impede pedestrian travel, create trip hazards on sidewalks, or impede snow removal.
- e. Each EVSE shall incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage. Cords shall be retractable or have a place to hang the connector and cord a safe and sufficient distance above the ground or pavement surface. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
- f. Where EVSE is provided within a pedestrian circulation area, such as a sidewalk or other accessible route to a building entrance, the EVSE shall be located so as not to interfere with accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- g. Publicly-accessible EVSEs shall be maintained in all respects, including the functioning of the equipment. A 24-hour on-call contact shall be provided on the equipment for reporting problems with the equipment or access to it. To allow for maintenance and notification, the Borough of Midland Park shall require the owners/designee of publicly-accessible EVSE to provide information on the EVSE's geographic location, date of installation, equipment type and model, and owner contact information.

**5. Signs**

- a. Publicly-accessible EVSE shall have posted regulatory signs, as identified in this section, allowing only charging electric vehicles to park in such spaces. For purposes of this section, "charging" means that an electric vehicle is parked at an EVSE and is connected to the EVSE. If time limits or vehicle removal provisions are to be enforced, regulatory signs including parking restrictions shall be installed immediately adjacent to, and visible from the EVSE. For private EVSE, installation of signs and sign text is at the discretion of the owner.
- b. All regulatory signs shall comply with visibility, legibility, size, shape, color, and reflectivity requirements contained within the Federal Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
- c. Wayfinding or directional signs, if necessary, shall be permitted at appropriate decision points to effectively guide motorists to the EVSE parking space(s). Wayfinding or directional signage shall be placed in a manner that shall not interfere with any parking space, drive lane, or exit and shall comply with b. above.
- d. In addition to the signage described above, the following information shall be available on the EVSE or posted at or adjacent to all publicly-accessible EVSE parking spaces:
  - 1) Hour of operations and/or time limits if time limits or tow-away provisions are to be enforced by the municipality or owner/designee;

- 2) Usage fees and parking fees, if applicable; and
- 3) Contact information (telephone number) for reporting when the equipment is not operating or other problems.

6. Usage Fees

- a. For publicly-accessible municipal EVSE: In addition to any parking fees, the fee to use parking spaces within the municipality identified as EVSE spaces shall be specified in Chapter 90 Fees and Charges for each hour that the electric vehicle is connected to the EVSE.
- b. Private EVSE: Nothing in this ordinance shall be deemed to preclude a private owner/designee of an EVSE from collecting a fee for the use of the EVSE, in accordance with applicable State and Federal regulations. Fees shall be available on the EVSE or posted at or adjacent to the EVSE parking space.

**SECOND: SEVERABILITY**

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

**THIRD: REPEAL OF PRIOR ORDINANCES**

All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to extent of such inconsistency.

**FORTH: EFFECTIVE DATE**

This ordinance shall take effect after final passage and publication as provided by law.

**Introduced by: Councilman Kruis      Seconded by: Councilman Iannone**

**Roll Call:**

|                               |               |
|-------------------------------|---------------|
| <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
| <b>Councilman Damiano</b>     | <b>Absent</b> |
| <b>Councilman Iannone</b>     | <b>Aye</b>    |
| <b>Councilman Kruis</b>       | <b>Aye</b>    |
| <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
| <b>Council President Peet</b> | <b>Aye</b>    |

**NEW BUSINESS:**

**Councilman DeBlasio** stated he has received several complaints concerning the parking near El-Zahra Islamic Center located at 218 Irving Street.

Borough Administrator/Clerk Wendy Martin stated a meeting was already conducted with Chief Powderley, Sgt. Noah Van Vliet, and Fire Prevention Official Michael Rau. They will meet with Imam Shaykh Moutza Charaf next week to discuss the safety of the parishioners and the residents. An agenda was emailed to the Imam prior so that all concerns may be addressed.

Borough Administrator/Clerk Wendy Martin was approached by the Vargas family, who are residents of Midland Park, requested permission from the **Mayor** and **Council** to hold their annual family party at Wortendyke Park and to consume alcoholic beverages.

**Motioned by: Councilman Kruis      Seconded by: Councilman Iannone**

**Roll Call:**

|                               |               |
|-------------------------------|---------------|
| <b>Councilman DeBlasio</b>    | <b>Aye</b>    |
| <b>Councilman Damiano</b>     | <b>Absent</b> |
| <b>Councilman Iannone</b>     | <b>Aye</b>    |
| <b>Councilman Kruis</b>       | <b>Aye</b>    |
| <b>Councilwoman DeLuca</b>    | <b>Absent</b> |
| <b>Council President Peet</b> | <b>Aye</b>    |

Borough Administrator/Clerk Wendy Martin stated Jessica Harmon, Planning Board and Board of Adjustments Secretary, asked if the Governing Body would like to receive a report for applied,

approved and/or denied applications that have been received by either Board. Ms. Martin asked if the Mayor and Council would like to receive a report of the Board of Adjustments denials and approvals. The Borough Attorney Robert Regan will give Borough Administrator/Clerk Wendy Martin a sample copy of the state required annual year end denial report. Ms. Martin will convey the Mayor and Council's request.

A filming company has approached the Borough and requested to film on Midland Park's streets and the Library's property. Borough Administrator/Clerk Wendy Martin reported the Borough does not have a filming ordinance. The Clerk's Office is researching surrounding municipalities for ordinances and applications that Midland Park may introduce and adopt in the future.

The Police Department conducted a traffic investigation on Pierce Avenue towards Cross Avenue. Mayor Shortway received a complaint from a resident stating there were drivers speeding on this road. Sgt. Noah Van Vliet analyzed the data and concluded that there was no speeding occurring on this road but may have a line-of-sight issue. Superintendent of the Department of Public Works, Matthew Tauber will be contacted to discuss the possibility of striping the street. Property Maintenance will be informed regarding the trimming of the bushes and shrubs on Pierce Avenue.

**PUBLIC COMMENT:**

**Ray Chapman, 225 Vreeland Avenue** – While Mr. Chapman was removing political signs around Midland Park, he noted the pristine conditions the town was in. Mr. Chapman thanked the Department of Works for work and care of the Borough. Mr. Chapman also noted the excessive number of deer that were present. His concern was mainly for the safety of Midland Park's residents. Borough Administrator/Clerk Wendy Martin warned residents not to feed the wildlife and to adhere to the Borough's Ordinance #11-05, §3.-14 et seq.

**Caller 01** – No comment

**Caller 02** – No comment

**ADJOURNMENT:**

There being no further response nor any further business to address, at 9:03 P.M., on a Motion by **Councilman Kruis**, Seconded by **Councilman Iannone** and carried, **Mayor Shortway** adjourned the meeting.

Respectfully submitted,

Wendy Martin, RMC  
Borough Administrator/Clerk