

**BOROUGH OF MIDLAND PARK  
280 GODWIN AVENUE  
MIDLAND PARK NJ 07432  
MAY 25, 2023**

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

On May 25, 2023 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.

Mayor Shortway called the meeting to order, noting the date as May 25, 2023, 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 Braunius</b>	<b>Present</b>
	<b>Councilman DeBlasio</b>	<b>Present</b>
	<b>Councilman Damiano</b>	<b>Present</b>
	<b>Councilman Kruis</b>	<b>Present</b>
	<b>Councilwoman Peet</b>	<b>Present</b>
	<b>Council President DeLuca</b>	<b>Present</b>

**ALSO PRESENT:** Borough Attorney Robert Regan, Borough Administrator/Clerk Wendy Martin and Deputy Clerk Mari J. Margiotta

**PROCLAMATION:**

LGBTQ+ Pride Month – Carried to June 8, 2023 Mayor and Council Meeting

**APPROVAL OF MINUTES:**

A Motion to approve the Minutes of the Work Session, Closed Session, and Open Public Meeting from the dates of March 9, 2023 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 Braunius**                      **Seconded by: Councilwoman Peet**

<b>Roll Call:</b>	<b>Councilman Braunius</b>	<b>Aye</b>
	<b>Councilman DeBlasio</b>	<b>Aye</b>
	<b>Councilman Damiano</b>	<b>Aye</b>
	<b>Councilman Kruis</b>	<b>Aye</b>
	<b>Councilwoman Peet</b>	<b>Aye</b>
	<b>Council President DeLuca</b>	<b>Aye</b>

**OPEN TO THE PUBLIC:**

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

Due to the adoption of Daniel's Law, P.L.2021, c.371 the Borough only requires the Public to state their name and if they reside in the Borough of Midland Park for the Record.

Sandra Abballe, Friends of the Library announced the Summer Concert Series dates and times. There

will be an ice cream truck during the events. All are invited.  
There being no one else from the Public wishing to speak, the Public Portion was closed.

**LIAISON REPORTS:**

**Mayor Shortway**

**Mayor Shortway** stated on May 15, 2023, at the Planning Board meeting, some final tasks were discussed concerning Dunkin Donuts. After the striping of their parking lot is completed, they will be opening. On May 23, 2023, the Board of Education representatives and the Council liaisons, the **Mayor, Councilwoman Peet**, and Borough Administrator/Clerk Wendy Martin discussed pending matters.

**Councilman DeBlasio**

**Information Technology/Building Department/Municipal Alliance**

**Councilman DeBlasio** spoke with Building Official Mark Berninger, who stated the **Building Department** was busy. The **Councilman** met with **Information Technology** Philip Scaglione. Mr. Scaglione is installing tougher security software on the Borough staff's laptops. Also, Mr. Scaglione is looking at a new app "App Driver" software. This app will scan all incoming emails with attachments and links to identify any scams and/or viruses. Recently, the Department of Public Works experienced a glitch in their access center; a malfunction maybe at fault on the tower and the problem is being addressed and repaired. The cameras have been installed in the interior of the Recreation building and outside cameras are being discussed and look at. Additional Wi-Fi is needed by the shed so that the smart-sprinkler system will work properly and the camera systems will function at full capacity.

**Councilman Damiano**

**Finance/Public Safety – Ambulance/Fire Prevention**

**Councilman Damiano** reported there was progress for the **Finance Department** and **Public Safety - Ambulance**. Fire Official Michael Rau of **Fire Prevention** monthly statement read: 33 inspections and 27 re-inspections were among the permit inspections that occurred, a rebate from the State for LHU's were \$8052.85 was received. 23 Certificates were issued.

**Councilman Kruis**

**Property Maintenance/ Public Works/Planning Board**

**Councilman Kruis** stated there was progress reported for **Property Maintenance**. The **Councilman** received a report from the Superintendent of the Department of **Public Works** Matthew Tauber, who wrote the following updates: Open Space Project for the Woodside practice field is nearing completion, the DPW relocated the shed so that the irrigation system can be housed there and give the participating teams a place for storage. A well-attended shredding day was held on May 13, 2023 at the DPW building. All Borough properties have been mulched and flowers have been planted. The Boy Scouts weeded and mulched at the VFW on Faner Road. The Girl Scouts planted flowers at Borough Hall and the window boxes on Godwin Avenue. The DPW Staff also set up for the Library's Movie Night and for the Color Run as well. The lighting project in the Council Chambers has been completed. A decision has been made to hire applicant Mark Cohen to the staff of the Department of Works.

**Councilwoman Peet**

**Public Safety – Police/Board of Health/Bd of Education/Ridgewood Water**

**Councilwoman Peet** communicated the statistics for the **Police Department's** monthly activity which included: community policing, welfare checks, assisting citizens, traffic enforcement details, property check, medical assists, missing person investigations, and shoplifting. The **Board of Health** report stated there was progress. On May 18, 2023, the **Councilwoman** attended the Bergen County Joint Insurance Fund meeting. The auditors' report will be presented at their next meeting. It was announced that Midland Park was the recipient of a Safety Award. Council representative and Borough Administrator/Clerk Wendy Martin met with the **Board of Education** Committee. The contents of the meeting were confidential and will only be discussed at the Borough's Closed Sessions. On June 20, 2023, **Ridgewood Water** will

conduct a meeting updating all municipalities involved on the lead pipe project. The Borough will also be introducing an ordinance to clarify water usage and the observance of its laws in the near future.

**Council President DeLuca**

**Public Safety – Fire/Personnel/Library**

**Council President DeLuca** stated the **Fire Department** received zero preplans from the Fire Official on his iPad. The preplans are to be taken when doing the inspections and loaded into the Codes system which could assist in the future for dangerous fire calls. On May 17, 2023. The Fire Department trained at the Fire Academy in Mahwah and after toured the new buildings. A heartfelt Memorial Day service was hosted by the Fire Department which was attended by **Mayor Shortway, Councilwoman Peet, Councilman Braunius, Councilman DeBlasio**, and herself. **Library** Director Catherine Dileo's monthly report stated the increase in (formed reported digital and visible circulation 5 % from April 2022 and the building usage of 40% increase). Ms. Dileo has successfully decreased the contract costs with the Wall Street Journal. For an adult program, Ms. Dileo is in the midst of setting up a date with Bill Ervolino, a journalist and writer, who has gaining popularity visiting local libraries. Several Midland Park businesses (22) have joined the Library's scavenger hunt and (5) Borough locations have been added. The summer reading program will begin shortly. Miss Emily is already planning to visit the students at the Midland Park's schools. Many encouraging programs have been planned and prizes will include lawn signs for the winners. At the last Friends of the Library meeting, topics consisted of fundraising, Community Day, and Summer Concert Series.

**Councilman Braunius**

**Office of Emergency Management/ Recreation/Chambers of Commerce**

**Councilman Braunius** reported there was progress for **Office of Emergency Management** and the **Chambers of Commerce**. Director of Recreation, Kathy LaMonte, spoke with the **Councilman** and informed him the Memorial Day Parade preparations are completed.

**ADMINISTRATOR'S REPORT:**

Borough Administrator/Clerk Wendy Martin stated she and Deputy Clerk Mari J. Margiotta attended at the Bergen County Board Workers training in Paramus explaining and detailing the new voting equipment. All Election equipment will be delivered in the coming week. The Board of Education meetings are continuing with the Borough. The Military banners will be hung by the Department of Public Works on May 25, 2023. Ms. Martin is continuing on the Joint Insurance Fund vehicle audit and Affordable Housing requirements and the appointment for the Municipal Housing Liaison. The Kentshire sent their payment for the number of overages (59) of ambulance calls for this past year.

**ORDINANCES ON FINAL:**

**1. ORDINANCE #13-2023**

**AN ORDINANCE TO AMEND CHAPTER 34 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED "ZONING". (Revocation of Zoning Certificate)**

**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, §34-21.3, Zoning Certificate, be and is hereby amended to add the following:

j. Revocation of Zoning Certificate

1. Any person, corporation, partnership, firm or entity which has received a zoning certificate pursuant to this section and is subsequently determined to have violated the terms and conditions of the zoning certificate or has otherwise been determined to have violated any statute, ordinance or other provision pertaining to the use of the structure shall be subject to

- having the zoning certificate revoked by the Zoning Officer. Any party subject to such revocation shall have the right to appeal such revocation pursuant to N.J.S.A. 40:55D-70a.
2. A construction permit or certificate of occupancy for industrial use in the Industrial District shall also be subject to having the construction permit or certificate of occupancy revoked by the Zoning Officer if it is determined that the holder of the construction permit or certificate of occupancy has violated the terms and conditions thereof or has otherwise been determined to violate any statute, ordinance or other provision pertaining to the use of the structure. Any party subject to such revocation shall have the right to appeal such revocation pursuant to N.J.S.A. 40:55D-70a.

**Section 2. Severability.**

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

**Section 3. Inconsistent Ordinances Repealed.**

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

**Section 4. Effective Date.**

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

**Introduced by: Councilman Kruis**

**Seconded by: Councilman Braunius**

**Roll Call:**      **Councilman Braunius**      **Aye**  
                  **Councilman DeBlasio**      **Aye**  
                  **Councilman Damiano**      **Aye**  
                  **Councilman Kruis**      **Aye**  
                  **Councilwoman Peet**      **Aye**  
                  **Council President DeLuca**      **Aye**

At this time, **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #13-2023.

**Due to the adoption of Daniel's Law, P.L.2021, c.371 the Borough only requires the Public to state their name and if they are residents of Midland Park for the Record.**

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #13-2023.

**2. ORDINANCE #15-2023**

**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 Code 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. A Provider or a Communications Service Provider, as the term is defined herein, are examples of a typical Applicant under the provisions of 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, communication wiring (in the case of Strand Mounted Antennas, as the term is defined herein), tower or support structure to which the equipment is attached. A Small Wireless Facility, as defined herein, is an example of a Communications Facility.

**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, and which may allow for collocation of multiple carriers, and additional municipal services including, but not limited to, public Wi-Fi and surveillance cameras. Decorative Pole design(s) approved by the Borough are attached as Exhibit A to this Chapter.

**DESIGNEE**

The person appointed by the Borough to serve as the initial point-of-contact and consultant for the Borough for all matters pertaining to this chapter, and who may be contracted for professional services.

**ELIGIBLE FACILITIES REQUEST**

An eligible facility 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 or SERVICE PROVIDER or WIRELESS SERVICE 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. The terms Applicant and Provider may be used interchangeably in this Chapter and refer to the same person, as applicable.

**PUBLIC RIGHT-OF-WAY or 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 is no more than three cubic feet in volume; and (ii) all other wireless equipment associated with the antenna, including any preexisting equipment, is cumulatively no more than 28 cubic feet in volume, (iii) the maximum height of the Small Wireless Facility is 50 feet.

**STATE**

The State of New Jersey.

**STRAND MOUNTED ANTENNA**

An Antenna with a maximum volume of 1.5 cubic feet, including any ancillary components of said Antenna, which is attached to communication wiring that is mounted to and which runs between utility Poles or similar structures in the Right-of-Way, and which are intended to support such communications wiring.

**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, trees and open spaces, etc., 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. A wireless facility is one type of communications 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 the Public Right-of-Way. Right-of-Way Use Agreement**

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 or Applicant'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. Approved locations shall be included as an exhibit to the Agreement, with said approved locations determined via adherence to the location selection process outlined in section 91-4 and pre-selected locations described in Exhibit B herein.
- D. Approved design or designs for Small Wireless Facilities, including Decorative Pole designs described in Exhibit A herein, and any other facilities for which Borough approval is granted shall be included as an exhibit to the Agreement.
- E. 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.
- F. The Provider shall provide insurance and indemnification of the Borough as described in the Right-of-Way Use Agreement. The Provider shall provide proof of the following coverages:
  - (1) Worker's Compensation and Employer's Liability insurance in compliance with the State's Worker's Compensation Law, with minimum limit of liability of \$500,000.
  - (2) Comprehensive General Liability insurance with minimum limit of liability of \$2,000,000 per occurrence.
  - (3) Automobile Liability insurance covering claims for bodily injury and property damage arising from all owned, hired and non-owned vehicles with minimum limit of liability of \$1,000,000 combined single limit.
- E. The following applies to any Right-of-Way Use Agreement entered into pursuant to this section:
  - (1) The terms and conditions of a Right-of-Way Use Agreement between the Borough and a cable television service Provider for the installation of Cabinets and Antennas in the Public Right-of-Way may be modified from the above conditions if any of the following apply:
    - a. Such modification is required by the New Jersey Board of Public Utilities
    - b. Such modification is required by any other local, state or federal agency having jurisdiction over the provision of cable services and laws and regulations pertaining to the installation of cable television infrastructure pursuant to same.
  - (2) In such instances, at minimum, a Right-of-Way agreement shall include:
    - a. An exhibit listing all installed facilities, located by nearest address and coordinates.
    - b. A basic verbal and graphical description of the equipment installed.
    - c. This subsection is intended to encompass, in particular, large cabinets installed in the Right-of-Way as well as Strand Mounted Antennas, as the term is defined herein, as well as any new deployment patterns which fall outside of the types of facilities which are typical and standard for cable television network infrastructure.
  - (3) It is the intention of this chapter that any Right-of-Way agreement between the Borough and a cable television service Provider shall not regulate the installation of cabling and communication wiring. Communications cabling and wiring shall be regulated by the applicable franchise issued to the cable television service Provider pursuant to the New Jersey Cable Television Act.

**§91-3 Right-of-Way Permit.**

No person may construct, maintain or perform any other work in the Public Right-of-Way related to Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, Poles 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, hereinafter referred to as a Permit or Right-of-Way Permit.

- 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 Small Wireless Facilities, 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.
- B. 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.
- C. 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.
- D. 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.
- E. The Provider shall comply with the Permit approval process outlined in section 91-8 herein.

**§91-4 Location and Siting.**

- A. General Siting Standards, Pre-Selected Locations.
  - (1) Applicant shall restrict its Communications Facility and Pole placement to the locations selected and highlighted in Exhibit B to this ordinance, with said Exhibit B consisting of all locations in the Borough where Communications Facilities and Poles in the Public Right-of-Way are pre-approved as to location, with other terms and conditions subject to this Chapter.
  - (2) If said Exhibit B locations are deemed to be unacceptable or insufficient for Applicant's network requirements, Applicant shall reasonably demonstrate why this is the case to the satisfaction of the Borough.
  - (3) If Applicant can sufficiently demonstrate the conditions of subsection (2) above, then Borough may approve additional locations for the placement of its Communications Facilities, with the fewest number of additional locations being approved as are necessary to meet the coverage requirements of Applicant.
  - (4) Said Exhibit B shall be made available to Applicant in a GIS-compatible format upon request.
- B. Location, Safety and Aesthetics. No Pole shall be erected in the public Right-of-Way unless it:
  - (1) Complies with the above General Siting Standards; and
  - (2) Is replacing an existing Pole; or
  - (3) Is approved by the Borough; or
  - (4) Is located within the Public Right-of-Way; and
  - (5) Is at least 500 linear feet from any other existing pole or proposed pole, which is used to support a Small Wireless Facility by the Applicant, and is at least 250 feet from any Small Wireless Facility by any other Communications Service Provider, unless Applicant can

reasonably demonstrate that such minimum spacing requirements constitute a prohibition of service; and

- (6) Is not located in an area with underground utilities except as specified in paragraph I below; and
- (7) Does not inhibit any existing sight triangles; and
- (8) Does not interfere with Public Right-of-Way usage by first responders and other emergency services vehicles and personnel; and
- (9) Does not interfere with ingress and egress on to and off of private property; and
- (10) Does not pose a traffic hazard or other hazardous condition; and
- (11) Allows adequate room for the public to pass and re-pass across the public Right-of-Way; and
- (12) Is no taller than 50 feet in height, including the antennas, or 110% of the height of poles in the surrounding streetscape, whichever is higher; and
- (13) Is no further than 5 feet from the curb line, if applicable; and

C. Decorative Poles. At its sole discretion, the Borough may require adherence to the following design standards, which will be enforced in a non-discriminatory manner:

- (1) Borough may reasonably require Applicant to utilize the Decorative Pole designs included in Exhibit A to this ordinance for all proposed Poles and Small Wireless Facilities.
- (2) Applicant retains responsibility for acquiring and configuring, at Applicant's own expense, said Decorative Poles for use for provision of its telecommunications services.
- (3) The burden of proof is on the Applicant, on a case-by-case basis, to demonstrate why the Exhibit A design is not possible or feasible for the Applicant.
- (4) If Applicant can demonstrate this to the Borough's reasonable satisfaction, then the Borough may approve additional Decorative Pole designs that are technically feasible to Applicant or approve of the use of a standard utility pole for a Small Wireless Facility, at the Borough's sole discretion.
- (5) Applicant will heed reasonable requests by the Borough, pursuant to this subsection, to utilize stealth technology and Decorative Pole designs, including those described above, in order to preserve the existing character and streetscape and minimize impact on surrounding properties by causing the proposed Small Wireless Facilities to blend in compatibly with their background.
- (6) The final approved Decorative Pole design may vary due to discussion between carrier and borough, and with borough approval.
- (7) Borough may update its preferred design or add more than 1 design via publishing a revision or update, or even include a design selection tool in the ordinance itself via exhibit. Applicant is free to contact the Borough to confirm the most recent approved Decorative Pole design or designs.

D. Antenna Design Requirements. Each Pole mounted Antenna:

- (1) Shall not exceed three cubic feet in volume; and
- (2) Shall not inhibit any sight triangle; and
- (3) Shall allow adequate room for the public to pass and repass across the public Right-of-Way.
- (4) Shall adhere to the design and siting standards of this subsection.

E. Cabinet Design Requirements. Each pole-mounted cabinet:

- (1) Shall not exceed 16 cubic feet; and
- (2) Shall not inhibit sight triangles; and
- (3) Shall allow adequate room for the public to pass and repass across the public Right-of-Way.
- (4) Shall adhere to the design and siting standards of this subsection.

F. Strand Mounted Antenna Siting and Design Standards. All Strand Mounted Antennas shall comply with the following standards:

- (1) Located between two utility Poles on communication wiring that is parallel to the ground and the edge of the Right-of-Way.
- (2) Not located on communication wiring that crosses the Right-of-Way.
- (3) Located entirely within the limits of the Public Right-of-Way.
- (4) Placed as close as possible to the nearest utility Pole, and in no event more than five feet from the Pole unless a greater distance is technically necessary or is required by the utility Pole owner for safety clearance.
- (5) Not exceed a maximum volume of 1.5 cubic feet, including Antenna and supplementary equipment
- (6) No Strand-Mounted Antenna or component shall exceed 18 inches in diameter.
- (7) No portion of a Strand Mounted Antenna shall extend greater than a distance of 12 inches measured from the wiring on which it is mounted.
- (8) Consolidated to the greatest extent technically feasible.

**G. Additional Requirements.**

- (1) Structural Certification. 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.
- (2) Ground Mounted Equipment. Ground mounted equipment may be used only to house equipment and other supplies in support of the small wireless facility.
- (3) 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.
- (4) Total Volume. 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.
- (5) As-Built Plans. 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.
- (6) 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, including Decorative Poles and designs approved in Exhibit B to this Chapter, in the Public Right-of-Way to the fewest possible to meet the coverage and capacity requirements, while remaining adherent to the spacing requirements contained herein in section 91-4.B
- (7) Fewest Possible Communications Facilities. Applicant shall minimize the number of new proposed Communications Facilities, including Small Wireless Facilities, Strand Mount Antennas, and any other communications facilities, in the Public Right-of-Way to the fewest possible to meet its coverage and capacity requirements.
- (8) 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.

- (9) Advertising and Signage. Unless otherwise permitted by the Borough, all Communications Facilities and supporting Poles and other support structures 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.
- (10) 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 and shall not violate the provisions of any applicable noise ordinance, including local state and federal standards. Small Wireless Facilities shall adhere to noise standards for stationary commercial and industrial sources promulgated by the New Jersey Department of Environmental Protection (NJDEP) via its statutory authority under the 1971 Noise Control Act and specified in detail in the Model Local Noise Control Ordinance. This includes the standard that sound levels emitted from Small Wireless Facilities may not exceed 65 decibels between 7:00 am and 10:00 pm and may not exceed 50 decibels between 10:00 pm and 7:00 am, as well as any such and related standards which are revised by the NJDEP from time to time.

**§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. Said restoration, repair and replacement shall be done to the satisfaction of the Borough engineer who will determine good workmanship as well as compliance with applicable standards and ordinances regarding road openings and pavement and sidewalk repair.
- 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. At the Borough's sole discretion, said facilities shall then be considered the property of the Borough.
- E. All relocated and replaced Communications Facilities shall be of similar design and of similar or smaller dimensions than the existing facilities to be replaced or relocated.

**§91-7 Fees and Charges.**

- A. One-time fees and recurring rates. As consideration to the Borough for entering into the Right-of-Way Use Agreement and also as a condition precedent for the issuance of any required permit pursuant to this chapter, the Applicant shall pay the required one-time fees and recurring rates as set forth in this section, and which may be amended or modified from time to time per revision and modification to local, state and federal laws and regulations. Said fees shall include application or one-time fees and recurring Right-of-Way occupancy rates.
- B. Permit application escrow. A permit application escrow of \$1,000 per new small wireless facility, including any new pole or support structure, as applicable, and \$500 per alteration, expansion, modification to an existing small wireless facility or pole or support structure, shall be submitted along with each application for a permit and held in escrow to be billed against actual incurred costs. Any expenses above the escrow shall be invoiced to Applicant directly and shall be paid by Applicant prior to the issuance of any permit.
- C. Reasonable approximation. All one-time fees will be a reasonable approximation of objectively reasonable costs.
- D. One-time fees apply to all work. One-time fees and event fees apply to the initial installation of facilities as well as to any subsequent upgrade, replacement, expansion, modification or alteration of same, with each instance of an upgrade, expansion, alteration, modification or repair being a separate project subject to a permit application and one-time fees. Ordinary maintenance and repair does not trigger any one-time fees.  
Designee consulting fee. Applicant shall be responsible for Designee consulting fees which will be a reasonable reflection of objectively reasonable costs, and which shall be first paid to Designee via the permit application escrow. Said fee shall be at the rate of \$350 per hour and shall not exceed three hours per installation, modification, alteration, upgrade or expansion of a small wireless facility or pole or support structure. Said consultation shall supplement Borough personnel with expertise and knowledge not otherwise possessed by Borough agents and officials.
- E. Annual Right-of-Way occupancy rate shall be \$270 per annum and shall be paid within 30 days of the issuance of the applicable permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the term. However, under no circumstances shall the rate be remitted later than 90 days after the full execution of the applicable Right-of-Way Use Agreement between Borough and Applicant.
- F. Annual attachment rate shall be equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Borough for the attachment of each small wireless facility to Borough-owned structures in the public Right-of-Way. This amount shall be paid within 30 days of issuance of the applicable permit(s) and annually thereafter. The annual rates in this subsection and the annual Right-of-Way occupancy rate subsection combined shall not exceed \$270 annually per small wireless facility location.
- G. All fees and rates will be applied in a non-discriminatory manner to all communications service Providers.

- H. Other fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Borough or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable laws, as well as attachment fees for the use of the Borough owned poles, towers, support structures, ducts, conduits or other structures in the public Right-of-Way, as set forth in attachment agreements authorizing such use.
- I. No refund. Except as otherwise provided in the Right-of-Way Use Agreement, Franchise Agreement or License, the Provider may remove its communications facilities, poles or towers from the public Right-of-Way at any time, upon not less than 30 days prior written notice to the Borough and may cease paying the Borough any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the public Right-of-Way. In no event shall a Provider be entitled to a refund of any fees paid prior to removal of its communications facilities, poles or towers.

**§91-8 Right-of-Way Permit Application Process**

- A. Permit application requirements. The application shall be made by the Applicant or its duly authorized representative. It shall be submitted to the Borough engineer and shall contain the following:

The Applicant's name, address, telephone number, and email address, including emergency contact information for the Applicant.

- (1) 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.
  - (2) 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.
  - (3) 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.
  - (4) Detailed construction drawings regarding the proposed communications facility, pole, tower, support structure or wireless facility (as applicable).
  - (5) 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 Borough but within the County Right-of-Way.
- B. 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 proprietary 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.

- C. 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.
- D. 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.
- E. Application fees. Unless otherwise provided by applicable laws, all applications pursuant to this chapter shall be accompanied by the required fees more specifically described in section 91-7 herein.
- F. 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 issued pursuant to this Chapter does not create a property right or grant authority to the Applicant to interfere with other existing uses of the public Right-of-Way.
- G. 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.
- H. Batch permit. An Applicant may simultaneously submit not more than 25 applications for communications facilities, or may file a single, consolidated application covering such communications facilities, provided that the proposed communications facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Borough. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each communications facility were a separate application.

**§91-9 Application review.**

- A. Pre-application Meeting. Prior to making a formal application with the Borough for use of the public Right-of-Way, all Applicants may meet voluntarily with the Borough Engineer and Designee to review the scope of the Applicant's proposal. This meeting may include discussion of Small Wireless Facility proposed locations and design.
- 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 new Small Wireless Facilities, including 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 collocation 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 an existing structure or new structure shall be decided within 150 days.
- G. Waiver. The Borough, via its council, administrator or any person designated as having the right to do so, may waive any siting standard set forth in this chapter where the Applicant demonstrates that strict enforcement of said Standard:
  - (1) Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or
  - (2) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(11); or
  - (3) 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.
  - (4) Will violate or conflict with any applicable provision of P.L. 1972 c. 186 the "Cable Television Act", as codified in N.J.S.A. 48:5A-1 et seq.
  - (5) Will violate or conflict with the applicable terms and provisions of any duly effective local system wide franchise for the provision of cable television service, as the term is defined in N.J.S.A. 48:5A-3 Definitions.
  - (6) Will violate or conflict with any applicable provision section 14:18 of the New Jersey Administrative Code which pertains to the provision of cable television service.
  - (7) Will violate or conflict with any other applicable state or federal law or regulation which pertains to the installation and operation of communications facilities in the public rights-of-way, regardless of whether such facilities are part of a wireless communications, cable television or landline telephonic system.

H. Final Decision by Borough. The Borough shall advise the Applicant in writing of its final decision.

**§91-10 Permitted use.**

Notwithstanding anything else in the codes and ordinances 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 §34-20 "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.

**§91-15 Repeal of Ordinance No. 16-2022; Inconsistent Ordinances Repealed.**

Ordinance No. 16-2022 be and the same is hereby repealed in its entirety.

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

**§91-16 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.

**§91-17 Effective Date.**

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

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

At this time, Mayor Shortway opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #15-2023.

**Due to the adoption of Daniel's Law, P.L.2021, c.371 the Borough only requires the Public to state their name and if they are residents of Midland Park for the Record.**

There being no response, the Mayor closed the meeting to the public regarding Ordinance #15-2023.

**2. ORDINANCE #16-2023**

**AN ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED "TRAFFIC" (Godwin Avenue 35mph)**

**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 7 of the Code of the Borough of Midland Park, Traffic, §7-11, Speed Limits, is hereby amended to read as follows:

<b>Name of Street</b>	<b>Side</b>	<b>Speed (MPH)</b>	<b>Location</b>
Dairy Street	Both	20	Entire Length
Godwin Avenue	Both	35	From the easterly Midland Park Borough line to the center of Goffle Road, thence
Godwin Avenue	Both	30	To the center of Prospect Street, thence
Godwin Avenue	Both	35	To the center of Clinton Avenue, thence
Godwin Avenue	Both	35	To the westerly Midland Park Borough line
Goffle Road	Both	40	From the southerly Wyckoff-Ridgewood corporate line to the center of the Wyckoff Avenue/Lake Street intersection, thence
Goffle Road	Both	35	To Godwin Avenue
Lake Avenue	Both	35	Midland Park-Ridgewood corporate line to Goffle Road
North Monroe Street	Both	35	Entire length
Prospect Street	Both	35	Entire length
Sunset Avenue	Both	20	Entire length

**Section 2. Severability.**

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

**Section 3. Inconsistent Ordinances Repealed.**

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

**Section 4. Effective Date.**

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

At this time Mayor Shortway opened the meeting to the public for any questions, comments, or concerns regarding Ordinance #16-2023.

**Due to the Adoption of Daniel's Law, P.L.2021, c.371, the Borough only requires the Public to state their name and if they reside in Midland Park for the Record.**

The Mayor closed the meeting to the public regarding Ordinance #16-2023.

<b>Introduced by:</b>	<b>Councilwoman Peet</b>	<b>Seconded by:</b>	<b>Council President DeLuca</b>
<b>Roll Call:</b>	<b>Councilman Braunius</b>	<b>Aye</b>	
	<b>Councilman DeBlasio</b>	<b>Aye</b>	

Councilman Damiano	Aye
Councilman Kruis	Aye
Councilwoman Peet	Aye
Council President DeLuca	Aye

**CONSENT AGENDA:**

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

**Resolution #098-2023 Authorizing Tax Collector to Prepare Estimated Tax Bills**

**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 2023 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 2023 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 2023 taxes.
2. The entire estimated tax levy for 2023 is hereby set at \$ 36,694,941.87 with 2023 estimated tax range between 95% and 105% set as 3.374.
3. In accordance with law the third installment of 2023 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 #099-2023 Return Street Opening Maintenance Bond Escrow**

**WHEREAS**, it is the recommendation of the Borough Engineer, as the project has been confirmed completed, and work acceptable to return the maintenance bond escrow received when applying for a street opening permit to the following parties:

Homestead Builders	780 E. Saddle River Rd, Ho-Ho-Kus, NJ 07423	\$1,250.00
(T-20-300-175)	Location: 32 Morrow Rd., Midland Park (8/20/04)	

**WHEREAS**, it is the recommendation of the Borough Engineer, as the project has been confirmed completed, and work acceptable to return the balance escrow received when applying for a street opening permit to the following parties:

Homestead Builders	780 E. Saddle River Rd, Ho-Ho-Kus, NJ 07423	\$ 465.50
(T-20-600-641)	Location: TWA Sewer extension (2/22/01)	

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

**Resolution #100-2023 Support S3739/A5402 Delaying the Implementation of the Fourth Round of Affordable Housing Obligations**

**WHEREAS**, the Borough of Midland Park endorses Bill S3739/A5402 preserving the currently established 3<sup>rd</sup> round obligations for an additional three years by legislating a pause in determining 4<sup>th</sup> round Affordable

Housing obligations, including present and prospective need and related litigation, which is scheduled to commence in July of 2025; and

**WHEREAS**, this would give all parties additional time to assess the efficacy and local impacts on the 3<sup>rd</sup> round agreements and give the legislature and the Governor time to reestablish their proper roles in balancing the needs of all stakeholders in this process; and

**WHEREAS**, New Jersey municipalities working through the 3<sup>rd</sup> round obligations require more time than had been allotted given the cascading effects of COVID; and

**WHEREAS**, municipalities are in the midst of determining the ripple effects of COVID lockdowns on their tax base and land use plans; and

**WHEREAS**, many builders are demanding more residential units than the infrastructure of our fully developed communities can safely and responsibly absorb faulting the post COVID record inflation that drives construction, debt financing and service costs to levels that incentivize builders to overreach; and

**WHEREAS**, municipalities should be allowed to work towards appropriately meeting the 3<sup>rd</sup> round commitments before adding yet another layer that public health and safety & welfare, limited infrastructure, hyper-local environmental and infrastructure challenges and fiscal realities may show to be unrealistic; and

**NOW, THEREFORE, BE IT RESOLVED** that Mayor and Council of the Borough of Midland Park strongly endorses Bill S3739/A5402; and

**BE IT FURTHER RESOLVED** that a copy of this resolution be forwarded to Governor Murphy, Members of the NJ Senate and Assembly representing Midland Park, and the League of Municipalities.

**Resolution #101-2023 Chapter 159 – Clean Communities Grant**

**WHEREAS**, N.J.S. 40A4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the Budget of any County or Municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the Budget; and

**WHEREAS**, said Director may also approve the insertion of an item of appropriation for an equal amount; and

**WHEREAS**, the Borough of Midland Park has received a total of \$16,284.15 from the State of New Jersey and wishes to amend its 2023 Budget to include this amount as revenue.

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the Borough of Midland Park hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the Budget of the Year 2023 in the sum of \$16,284.15, which is now available as a revenue for:

Miscellaneous Revenue

Special Items of General Revenue Anticipated with Prior Written Consent  
of the Director of the Division of Local Government Services:

Revenues Off-Set with Appropriations:

Clean Communities Grants

**BE IT FURTHER RESOLVED**, that a like sum of \$16,284.15 to be and the same is hereby appropriated under the caption of:

General Appropriation

Programs Off-Set by Revenues:

Clean Communities Grants

**BE IT FURTHER RESOLVED**, that the CFO did an electronic filing of this revenue to the Director of the Division of Local Government Services along with attachment.

**Introduced by: Council President DeLuca**

**Seconded by: Councilwoman Peet**

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

**RESOLUTIONS:**

**1. Resolution #097-2023 Bills List**

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

Current Fund ('22)	\$ 1,458.23
Current Fund	\$ 172,938.55
Capital Fund	\$ 65,296.00
Trust Fund	\$ 24,963.38
<b>TOTAL:</b>	<b>\$ 264,656.16</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 15 <sup>th</sup> Payroll	\$ 221,328.23
Current	May Health Payments	\$ 104,172.35
Current	May School Taxes	\$1,907,290.08
Trust	P-Card Payment	\$ 14.00

**NOW, THEREFORE, BE IT RESOLVED**, by the Council President and Council of the Borough of Midland Park that the claims totaling **\$2,497,460.82** approved and ratified respectively.

**Introduced by: Councilman Damiano**      **Seconded by: Council President DeLuca**

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

**2. Resolution #102-2023 Appoint Department of Public Works Full Time Laborer – Mark Cohen**

**WHEREAS**, the Borough of Midland Park finds it necessary to hire a Full-Time Laborer for the Department of Public Works; and

**WHEREAS**, the position was advertised, and candidates were interviewed, resulting in the appointment recommendation of Mark Cohen as Department of Public Works Laborer by the Borough Superintendent of Department of Public Works Matthew Tauber.

**WHEREAS**, the salary established in Ordinance #11-2023 provides the following title and salary to Mark Cohen, Department of Public Works Laborer at the annual salary of \$45,000.00.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Midland Park, that Mark Cohen be confirmed as full time Laborer, effective June 1, 2023.

**Introduced by: Councilman Kruis**      **Seconded by: Councilman Braunius**

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

**ORDINANCES ON INTRODUCTION:**

**1. ORDINANCE #17-2023 (CARRIED UNTIL June 8, 2023)**

**AN ORDINANCE TO AMEND CHAPTER 13 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED "WATER AND SEWER".**

**Introduced by: Councilwoman Peet**

**Seconded by: Councilman Kruis**

**Roll Call To Carry:**

Councilman Braunius	Aye
Councilman DeBlasio	Aye
Councilman Damiano	Aye
Councilman Kruis	Aye
Councilwoman Peet	Aye
Council President DeLuca	Aye

**MOTION:**

**Council President DeLuca made a motion, based on the recommendation of Fire Chief Matthew Tauber, to approve the application of Jack Bricca-Hall as a Midland Park Volunteer Firefighter.**

**Introduced by: Council President DeLuca**

**Seconded by: Councilwoman Peet**

**Roll Call:**

Councilman Braunius	Aye
Councilman DeBlasio	Aye
Councilman Damiano	Aye
Councilman Kruis	Aye
Councilwoman Peet	Aye
Council President DeLuca	Aye

**OLD BUSINESS:**

No Old Business at this time.

**NEW BUSINESS:**

Borough Administrator/Clerk Wendy Martin read a request from Thomas Bardzell. Mr. Bardzell asked the Borough to accept a memorial park bench in honor of his mother, father, and sister who passed away. He would like the bench to be placed at Wortendyke Park. The Governing Body agreed.

Ms. Martin reported that most of the Borough's office staff has participated the Active Shooter seminars. The Police Department was asked to conduct a mock-scenario for the employees on July 18, 2023.

The Midland Park Public Education Foundation would like approval to host their annual 5k event, on September 9, 2023.

**Moved by: Councilwoman Peet**

**Seconded by: Councilman Braunius**

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

Borough Administrator/Clerk Wendy Martin asked if the **Mayor** and **Council** would like the Property Tax Allocation Pie Chart to be included with the residents' tax bill. **Governing Body** agreed. Ms. Martin stated the charts would be stuffed by Borough employees to save money.

Borough Administrator/Clerk Wendy Martin asked if the **Mayor** and **Council** had any comment or feedback for the Military Tribute Banner Program. **Councilman DeBlasio** asked if there were date restrictions for applicants and if there should be a cap. Ms. Martin stated the municipalities that have the Banner Program. They all charge for the costs of the banners. The Borough does not make any money from the program. One municipality, that Ms. Martin is aware of, covers the costs. It was the censuses of the Governing Body that the Borough should not be involved in the financials of the program.

**PUBLIC COMMENT:**

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

**Due to the adoption of Daniel's Law, P.L.2021, c.371, the Borough only requires the Public to state their name and if they reside in the Borough of Midland Park for the Record.**

**John Beatty, President of the Midland Park Public Education Foundation** wanted to thank Borough Administrator/Clerk Wendy Martin, Mayor and Council for their support and assistance in the Color Run.

There being no one from the Public wished to speak, the Public Session was closed.

**ATTORNEY REGAN READ THE RESOLUTION**

**Resolution #103-2023 After Closed Session 5-25-2023**

**WHEREAS**, N.J.S.A. 10:4-12 allows for a Public Body to go into closed session during a Public Meeting; and

**WHEREAS**, the Governing Body of Midland Park has deemed it necessary to go into closed session to discuss certain matters which are exempted from the Public; and

**WHEREAS**, the regular meeting of this Governing Body will reconvene;

**NOW, THEREFORE, BE IT RESOLVED**, that the Borough Council of Midland Park will go into closed session for the following reason (s) as outlined in N.J.S.A. 10:4-12:

Any matter which, by express provision of Federal Law, State Statute or Rule of Court shall be rendered confidential or excluded from discussion in public (Provision relied upon):

\_\_\_\_\_Any matter in which the release of information would impair a right to receive funds from the federal government;

\_\_\_\_\_Any matter the disclosure of which constitutes an unwarranted invasion of individual privacy;

☒ **X** Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body (Specify contract): PBA Contract.

\_\_\_\_\_Any matter involving the purpose, lease, or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed;

X   Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection;

       Any investigations of violations or possible violations of the law;

       Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer (If pending or anticipated litigation, the matter is: contract negotiations nature of the contract and interested party is *in circumstances, if public disclosure of the matter would have a potentially negative impact on the Borough's position in the litigation or negotiation, this information may be withheld until such time that the matter is concluded, or the circumstances no longer present a potential impact*);

  X   Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting (Subject to the balancing of the public's interest and the employee's privacy rights under South Jersey Publishing, 124 N. J. 478, the employee(s) and nature of discussion is Personnel & By Laws .

       Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility;

**BE IT FURTHER RESOLVED**, that the Borough Council hereby declares that its discussion of the aforementioned subject(s) may be made public at a time when the Borough Attorney advises the Borough Council that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Borough, or any other entity, with respect to said discussion. That time is currently estimated as the time of said matter.

**BE IT FURTHER RESOLVED**, that the Borough Council, for the aforementioned reasons, hereby declares that the public is excluded from the portion of the meeting during which the above discussion shall take place, and hereby directs the Borough Clerk to take the appropriate action to effectuate the terms of this resolution.

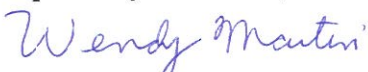
<b>Moved by:</b>	<b>Councilman Braunius</b>	<b>Seconded by: Council President DeLuca</b>
<b>Roll Call:</b>	<b>Councilman Braunius</b>	<b>Aye</b>
	<b>Councilman DeBlasio</b>	<b>Aye</b>
	<b>Councilman Damiano</b>	<b>Aye</b>
	<b>Councilman Kruis</b>	<b>Aye</b>
	<b>Councilwoman Peet</b>	<b>Aye</b>
	<b>Council President DeLuca</b>	<b>Aye</b>

**ADJOURNMENT:**

There being no further business to discuss, on a Motion by **Councilman Braunius**, Seconded by **Council President DeLuca** and carried.

**Mayor Shortway** adjourned the Open Public meeting at 8:39 P.M. and convened immediately into the After Closed Session.

Respectfully submitted,



Wendy Martin, RMC  
Borough Administrator/Clerk