

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

There being no one from the Public wishing to speak, the Public Portion was closed.

**LIAISON REPORTS:**

**Mayor Shortway**

**Mayor Shortway** stated on May 3, 2023, along with **Councilwoman Peet**, Borough Administrator/Clerk Wendy Martin, and Police Chief Powderley attended a meeting with Eastern Christian School to discuss the prospect of having a School Resource Officer. At the Mayors Meeting in Hackensack on May 9, 2023, **Mayor Shortway** listened to a guest speaker on the labor laws of New Jersey.

**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 informed the **Councilman** of the progress for the Memorial Day Parade. There were (17) Veteran Flags hung on the Borough's streets and will continue the program annually; summer Camp's enrollment is filling up quickly. The Recreation's baseball program has become very popular and in the future Midland Park may play all-star games against Waldwick's teams.

**Councilman DeBlasio**      **Information Technology/Building Department/Municipal Alliance**  
**Councilman DeBlasio** was absent. **Council President DeLuca** read the report for **Information Technology**. Information Technology Philip Scaglione wrote: the Recreation Department's camera has been installed by Department of Public Works staff which saved the Borough \$3,000.00, Borough Hall reception counter was equipped with a camera, the refreshment stand, IT room, and the Borough IT room also received cameras. Mr. Scaglione is continuing moving data to the Cloud amongst many other updates and new programs. **Councilman Damiano** reported for the **Building Department**. The **Councilman** and Building Official Mark Berninger spoke, and the following are the updates: signage will be reinforced since the laws were relaxed during the pandemic, a report will be created to inform the Governing Body of new businesses in the Borough, the Building Department had an increase in its profits, the shared services with Ho-Ho-Kus is running smoothly, meetings with the Planning Board are scheduled to update Ordinances, and an audit was conducted on February 6, 2023 by the Department of Community Affairs.

**Councilman Damiano**      **Finance/Public Safety – Ambulance/Fire Prevention**  
**Councilman Damiano** reported there was progress for the **Finance Department**. **Fire Prevention's** monthly statement reads: 20 inspections and 20 re-inspections were among the 84 inspections that occurred, a rebate from the State for Life Hazard totaling \$8052.85 was received. The **Ambulance Corps** for the month of April responded to 34 calls with a total of 380 miles. The Kentshire had 2 calls this month and 59 for the year.

**Councilman Kruis**      **Property Maintenance/ Public Works/Planning Board**  
**Councilman Kruis** stated there was progress reported for **Property Maintenance**. The **Councilman** informed the Governing Body, that Superintendent of the Department of **Public Works** Matthew Tauber had the following updates: Midland Avenue Culvert Project has been completed, the County project on Greenwood Avenue has also been completed and the road has been reopened, the Department of Public Work's staff has set up for several events and meetings in the past month; there has been 19 submissions for the open position of Laborer; a decision will be made in the upcoming weeks of who will be hired. The **Planning Board** will conduct its meeting on Monday, April 15, 2023 and the report will follow.

**Councilwoman Peet**      **Public Safety – Police/Board of Health/Bd of Education/Ridgewood Water**  
**Councilwoman Peet** updated the **Mayor** and **Council** on April 25, 2023, when the **Board of Education** held their monthly meeting. The **Councilwoman** stated there were standard motions such as: personnel, finance, policy updates, and curriculum. On the topic of Building and Grounds, the Emergency Evacuation

routes were approved. At the upcoming May 23, 2023 meeting with the Board of Education, topics will consist of fields, Special Resource Officer, Eastern Christian, and the costs associated with services provided. The Board of Health held the annual Rabies Clinic at the parking lot of Borough Hall. At the drive-thru clinic, 60 dogs and 4 cats were immunized from Midland Park and other neighboring municipalities. The DPW did a wonderful job of setting up and preparing for the Clinic. The NorthWest Bergen Health Commission has finalized the contract with Valley Hospital nurses which saves the community money. In May 2023, **Ridgewood Water** will conduct a meeting updating all municipalities involved on the lead pipe replacement project. Ridgewood Water has asked all its residents to conserve water in order to keep the water provided at a reduced level of PFAS. Borough Administrator/Clerk Wendy Martin reported an Ordinance is in the process of being introduced concerning water restrictions and the possible actions that can be taken with offenders.

**Council President DeLuca**

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

**Council President DeLuca** stated the **Fire Department** received 18 calls in the month of April with 2 mutual calls. On Wednesday, May 24, 2023 at 7:30 P.M., there will be a memorial service led by the firemen. The Library Board will conduct their meeting on May 16, 2023. **Library** Director Catherine Dileo reported all is well with the many programs and working on updating policies. The Friends of the Library wanted to invite all residents and the Governing Body to the Summer Concerts in July 2023. The Day of Prayer was well attended by the **Mayor** and several members of Council.

**ADMINISTRATOR'S REPORT:**

Borough Administrator/Clerk Wendy Martin asked **Councilwoman Peet** if she would like the Board of Health reports posted as a link on the weekly eblast and the Borough's website. The **Councilwoman** would like the information posted. Ms. Martin arranged for the Bergen County Job Center to come May 22, 2023 to the Library and assist residents who are seeking jobs. Fire Chief Matthew Tauber and Fire Prevention Official Michael Rau have been collaborating to have their systems, ESP and Codes, interface and download to each other. This will allow emergency information, files, and future pictures to be shared between the two programs. May 16, 2023 is the deadline for Voter Registration forms to be submitted to the Borough and County for the primary Election in June 2023. The Clerk's Office will be opened late until 9:00 P.M. On May 13, 2023, the Shredding Event at the Department of Public Works yard will be from 9:00 A.M. to 1:00 P.M. The Open Space application for the year 2023 has been submitted for the enhancement of the existing parking lot by the new practice field. The Borough's Plenary Licenses are in the process of renewal. The Pet licensing term is underway. Ms. Martin thanked the Department of Public Works for setting up for the Administrators Meeting that was hosted here at Midland Park.

**ORDINANCES ON FINAL:**

**1. ORDINANCE #14-2023**

**AN ORDINANCE TO AMEND CHAPTER 8 OF THE CODE OF THE BOROUGH OF MIDLAND PARK ENTITLED "PARKING". (Municipal and Library Lots)**

**§ 8-2.1 Parking Restricted and Time Limited at Municipal Parking Facilities.**

[Ord. #09-07 § 8-2.1]

No person shall park a vehicle without authorization and for longer than the time shown in the parking lots located at the areas described below:

<b>Location</b>	<b>Restrictions</b>	<b>Maximum Time (if app.)</b>
Midland Park High School, Highland School, Godwin School parking lots and the	No parking from dusk to dawn except during school related activities approved	



<b>Location</b>	<b>Restrictions</b>	<b>Maximum Time (if app.)</b>
East Center Street parking lot/school bus facility	by the Board of Education	
Recreation Area Parking Lots (Dairy Street and Wortendyke Park)	No parking from dusk to dawn except during recreational activities approved by the Board of Recreation	
Midland Park Library Parking Lot	No parking from 2 a.m. to 9 a.m. Parking for library patrons only	Four (4) hour maximum, except for library employees
Midland Park Municipal Building Parking Lot - Green spaces	Resident Commuter Parking by Permit Only	Twelve (12) hour maximum
Midland Park Municipal Building Parking Lot - White spaces	General parking	Twelve (12) hour maximum
Midland Park Municipal Building Parking Lot - Yellow Spaces	No parking unless conducting or engaged in business or activities at the Borough Municipal Building	
Midland Park Municipal Building Parking Lot - Red Spaces	No parking except for Borough employees	
Midland Park Municipal Building Parking Lot – Northern most section of lot along grass section between Highland Ave.	School Drop Off Only. Parking is prohibited from 8:30 AM - 2:15 PM, 3:15 PM - 08:00 AM every day.	
Midland Park Municipal Building Parking Lot – Adjacent to the Four (4) curbed cement islands	No parking any time	
Midland Park Fire House Parking Lot - Yellow Spaces	No parking except for Midland Park Fire Dept. Firefighters	
Midland Park Fire House Parking Lot - White Spaces	No parking unless engaged in activities at the Fire House	

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

**Introduced by: Council President DeLuca**

**Seconded by: Councilman Braunius**

**Roll Call:**

**Councilman Braunius**

**Aye**

**Councilman DeBlasio**

**Aye**

**Councilman Damiano**

**Absent**

**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 #14-2023.

**Due to the adoption of Daniel's Law, P.L.2021, c.371 the Borough only requires the Public to state their name for the Record.**

There being no response, the **Mayor** closed the meeting to the public regarding Ordinance #14-2023.

### **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 #093-2023 Request to Reduce Speed Limit on Godwin Avenue**

**WHEREAS**, in response to a request from the Midland Park Police Department, the County of Bergen conducted a study to evaluate speed limits along the section of Godwin Avenue, a Bergen County roadway, between Clinton Avenue and the Midland Park/Wyckoff municipal boundary to determine whether the speed limit may be reduced from 40 miles per hour to 35 miles per hour; and

**WHEREAS**, the Borough Police Department is in receipt of correspondence from the Department of Planning and Engineering of the County of Bergen dated April 26, 2023 recommending that the speed limit along Godwin Avenue from Clinton Avenue to the Midland Park/Wyckoff municipal boundary be lowered from 40 miles per hour to 35 miles per hour, which will make the speed consistent with the speed limit on Godwin Avenue south of Clinton Avenue; and

**WHEREAS**, the aforesaid correspondence from the County requests a consenting resolution be provided by the Borough.

**NOW, THEREFORE BE IT RESOLVED**, that the Governing Body does hereby concur with the recommendation of the Department of Planning and Engineering of the County of Bergen that the speed limit along Godwin Avenue from Clinton Avenue to the Midland Park/Wyckoff municipal boundary be lowered from 40 miles per hour to 35 miles per hour; and

**BE IT FURTHER RESOLVED**, that a copy of the within resolution be forwarded to Eugene J. Murphy, Jr., Principal Engineer Civil of the Department of Planning and Engineering.

**Resolution #094 Authorize Professional Service Agreement Between the Borough of Midland Park and Peter Lupo, Hoplite Communications, LLC**

**WHEREAS**, the Borough of Midland Park desires to award a Contract for professional legal services to Peter J. Lupo, Esq. of Hoplite Communications, LLC ("Special Legal Counsel") to represent the Borough in connection with Agreements with communication carriers for the impending deployment in the Borough of 5G generation of mobile networks; and

**WHEREAS**, pursuant to the Municipal Land Use Law, *N.J.S.A. 40:55D-53.2*, application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants where an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the Borough; and

**WHEREAS**, all compensation paid to Special Legal Counsel for services rendered to the Borough will be paid by the communication/utility carrier.

**NOW, THEREFORE BE IT RESOLVED**, that Special Legal Counsel be and is hereby appointed to represent the Borough in providing legal services in connection with the impending deployment in the Borough of 5G generation of mobile networks and to perform such services as set forth in Schedule A attached the Professional Service Agreement; and

**BE IT FURTHER RESOLVED**, that the Mayor and Borough Clerk be and are hereby authorized to execute the aforementioned Professional Service Agreement; and

**BE IT FURTHER RESOLVED**, that this resolution is made without competitive bidding as permitted under the Local Public Contracts Law, *N.J.S.A. 40A:11-5(1)(a)(i)*; and

**BE IT FURTHER RESOLVED**, that the Borough Clerk be and is hereby authorized to publish a notice of the award of such Contract as set forth in *N.J.S.A. 40A:11-5(1)(a)(i)*.

**Introduced by: Councilman Braunius**

**Seconded by: Councilwoman Peet**

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

**RESOLUTIONS:**

**1. Resolution #092–2023 Bills List**

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

Current Fund ('22)	\$ 15.00
Current Fund	\$ 104,000.32
Dog Fund	\$ 732.80
Capital Fund	\$ 406,148.80
Open Space Fund	\$ 20,700.00
Trust Fund	\$ 6,202.25
<b>TOTAL:</b>	<b>\$ 537,799.17</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 April 28 <sup>th</sup> Payroll	\$ 214,583.63
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**NOW, THEREFORE, BE IT RESOLVED**, by the Council President and Council of the Borough of Midland Park that the claims totaling **\$752,382.80** approved and ratified respectively.

**Introduced by: Councilman Damiano**      **Seconded by: Councilman Kruis**

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

**ADDED:**

**2. Resolution #095-2023 Determining Block 45, Lot 9.01, Commonly Known As 90 Midland Avenue, To Be A Non-Condemnation Redevelopment Area**

**WHEREAS**, by resolution dated December 8, 2022, the Mayor and Council authorized the Planning Board to undertake a preliminary investigation to determine whether certain property known as Block 45, Lot 9.01 being more commonly known as 90 Midland Avenue ("the property") is a redevelopment area in accordance with the criteria set forth in *N.J.S.A. 40A:12A-5*; and

**WHEREAS**, the authorization to conduct the investigation was for a non-condemnation redevelopment area; and

**WHEREAS**, in accordance with said resolution, the Planning Board directed the Borough Planner, Burgis Associates to perform a Study and Planning Analysis; and

**WHEREAS**, Burgis Associates submitted a Report entitled, "90 Midland Avenue, Area In Need of Redevelopment Study" dated February 24, 2023 ("the Report"); and

**WHEREAS**, the Report determined that the property satisfies the criteria for a non-condemnation redevelopment area; and

**WHEREAS**, the Planning Board conducted a hearing in accordance with the provisions of *N.J.S.A. 40A:12A-6*; and

**WHEREAS**, on April 17, 2023 the Planning Board accepted the findings of the Report; and

**WHEREAS**, the aforesaid Planning Board resolution has been submitted to the Mayor and Council; and

**WHEREAS**, the Mayor and Council has considered said resolution and the Report.

**NOW, THEREFORE BE IT RESOLVED**, that the Mayor and Council hereby determines that the property is a non-condemnation redevelopment area; and

**BE IT FURTHER RESOLVED**, that the Borough Clerk is directed to transmit a copy of the resolution to the Commissioner of the Department of Community Affairs in accordance with the provisions of *N.J.S.A. 40A:12A-6(c)*; and

**BE IT FURTHER RESOLVED**, that the Borough Planner Burgis Associates be and is hereby authorized and directed to prepare a Redevelopment Plan for the property; and

**BE IT FURTHER RESOLVED**, that notice of this determination shall be served upon those parties entitled to receive notice in accordance with the provisions of *N.J.S.A. 40A:12A-6(d)*.

**Introduced by: Councilman Kruis**

**Seconded by: Councilman Braunius**

**Roll Call: Councilman Braunius**

**Aye**

**Councilman DeBlasio**

**Absent**

**Councilman Damiano**

**Aye**

**Councilman Kruis**

**Aye**

**Councilwoman Peet**

**Aye**

**Council President DeLuca**

**Aye**

#### **ORDINANCES ON INTRODUCTION:**

##### **1. 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 requests 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.
- 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 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:
  - (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).
  - (6) 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.
  - (7) 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.
  - (8) For any new aboveground facilities, accurate visual depictions or representations. If not included in the construction drawings.
  - (9) 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.

**Final Adoption and Open Public Hearing on Ordinance #15-2023 will be held on May 25, 2023.**

**Introduced by: Council President DeLuca**

**Seconded by: Councilman Braunius**

**Roll Call: Councilman Braunius**

**Aye**

**Councilman DeBlasio**

**Absent**

**Councilman Damiano**

**Aye**

**Councilman Kruis**

**Aye**

**Councilwoman Peet**

**Aye**

**Council President DeLuca**

**Aye**



**2. ORDINANCE #16-2023**

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

**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>(MPH)</b>	<b>Speed 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.

**Final Adoption and Open Public Hearing on Ordinance #16-2023 will be held on May 25, 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>Absent</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:**

At this time, **Mayor Shortway** opened the meeting to the public for any questions, comments, or concerns regarding Resolution #086-2023 **Open Space – The Dairy Street Recreation Area Complex Enhancement**.

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

<b>Roll Call:</b>	<b>Councilman Braunius</b>	<b>Aye</b>
	<b>Councilman DeBlasio</b>	<b>Absent</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>

**OLD BUSINESS:**

Borough Administrator/Clerk Wendy Martin discussed Beautification Day. Recreation Director Kathy LaMonte has asked the Girl Scouts to plant flowers at the Godwin School and the Boy Scouts will be mulching, planting flowers and placing flags at the VFW Cemetery. The Boy Scouts maybe planting the donated tree from Columbia Bank as well. **Council President DeLuca** did clarify this is not for Beautification Day but for their service hours. Residents are needed to volunteer in all community programs.

**NEW BUSINESS:**

**Council President DeLuca** stated the Ridgewood Governing Body is encouraging their residents to abide by "No Mow May".

**Council President DeLuca** made a Motion for **Councilwoman Peet** to read and present a Proclamation on May 21, 2023, to the Metastatic Breast Cancer at their annual Color Run. Seconded by **Councilwoman Peet**.

<b>Roll Call:</b>	<b>Councilman Braunius</b>	<b>Aye</b>
	<b>Councilman DeBlasio</b>	<b>Absent</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>

**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 for the Record.**

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

**ADJOURNMENT:**

There being no further business to discuss, on a Motion by **Councilman Braunius**, Seconded by **Councilman Damiano** and carried, **Mayor Shortway** adjourned the Open Public meeting at 8:31 P.M.

Respectfully submitted,



Wendy Martin, RMC  
Borough Administrator/Clerk