

ORDINANCE NO. 2022-14

**AN ORDINANCE CREATING CHAPTER 55-30A OF
THE TOWNSHIP CODE ENTITLED “SMALL
WIRELESS FACILITIES” PROCEDURES AND
STANDARDS REGARDING DEPLOYMENT OF
SMALL WIRELESS FACILITIES IN PUBLIC
RIGHTS-OF-WAY IN THE TOWNSHIP OF
BARNEGAT, COUNTY OF OCEAN AND STATE OF
NEW JERSEY**

WHEREAS, the wireless telecommunications industry has expressed interest in submitted applications to utilize space in public rights-of-way within Barnegat Township (the “Township”) for the installation of small cell wireless telecommunications facilities (hereinafter “Small Wireless Facilities”) in connection with the industry’s efforts to expand and/or upgrade existing 4G services and as part of the construction of a nation-wide 5G network; and

WHEREAS, the Township encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while preserving the Township’s ability to manage public rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the Township recognizes that as usage of wireless technologies continues to rapidly increase, Small Wireless Facilities will be critical to delivering wireless access to advanced technologies, broadband services and 911 services to residences, businesses, schools and individuals within the Township; and

WHEREAS, the Township recognizes that Small Wireless Facilities often are most effectively deployed in public rights-of-way; and

WHEREAS, multiple installations of Small Wireless Facilities within the public right-of-way can impact property values, create traffic and pedestrian safety hazards,

impact shade trees where proximity conflicts may require trimming of branches or require removal of roots and create visual and aesthetic blights all of which can negatively impact the quality and character of life within the Township; and

WHEREAS, the Township wishes to preserve the aesthetics of the community by encouraging the location of 5G equipment on existing or previously approved infrastructure; and

WHEREAS, A September 2018 Ruling and Order of the Federal Communications Commission (“FCC”) provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works and fees when dealing with Small Wireless Facility installation siting applications by the effective date of the Order which was January 14, 2019. The FCC Order further provided that all local agencies should be capable of fully implementing its provisions within 180 days of its adoption which was on September 26, 2018. The Order also includes modifications to “shot clocks” which require local governments to approve or deny applications within certain expedited periods of time; and

WHEREAS, the Township’s needs to amend its Ordinances to address the legal and practical issues that arise in connection with multiple Small Wireless Facility installations deployed in the public rights-of-way; and

WHEREAS, in light of the foregoing, this governing body is of the opinion that the adoption of this Ordinance and its immediate implementation are in the best interest of the Township and the health, safety and welfare of its residents and visitors.

NOW THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 55 of the Township Code entitled “Land Use” is hereby amended and supplemented to establish Article 30A, entitled “Small Wireless Facilities” which shall read as follows:

§55-30A.1 - Definitions.

- A. All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.A. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.
- B. All definitions of the words, terms and phrases that are set forth in the portion of the Middle-Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 U.S.C. §455, are incorporated herein and are made a part hereof.
- C. All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et. seq.*, are incorporated herein and are made apart hereof.
- D. All of the definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 C.F.R. §1.6002, as amended, are incorporated herein and are made a part hereof.
- E. In addition to the foregoing, the following words, terms and phrases shall have the meanings indicated unless an alternate meaning clearly is discernable from the context in which the word, term or phrase is used:

Personal Wireless Services

“Personal Wireless Services,” as defined in 47 U.S.C. §332(c)(7)(C), as supplemented and/or as amended.

Public Right-of-Way

The surface, the airspace above the surface and the area below the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and the area for utilities owned by the Township or within an easement to the public or other easement owned by the Township.

Small Wireless Facility

“Small Wireless Facility,” as defined in the Code of Federal Regulations at 47 C.F.R. §1.6002(1), as supplemented and/or as amended.

Smart Pole

A decorative utility pole that conceals, disguises or camouflages one or more Small Wireless Facility installation(s) and may include other

features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for multiple occupants and allow space for municipal use for other services and/or equipment. Smart Poles shall neither have external latches, external hinges, nor external cabling. The pole should be made of an inherently rust-resistant material (i.e., aluminum alloys or stainless steel).

Utility Pole

A wooden or metal pole that is used by public utilities to support electrical wires, telephone wires, coaxial cables, fiber optic cables and similar appurtenances.

- F. In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined herein then that term, word or phrase shall have its common, ordinary meaning.

§55-30A.2 Small Wireless Facility Siting Permit Requires; Consent to Use

Rights-of-Way Required.

- A. No person shall place a Small Wireless Facility in any right-of-way without first filing a Small Wireless Facility siting permit application, in the form specified herein and in accordance with the procedures specified herein, with the Township Clerk and obtaining a siting permit therefore, except as otherwise may be provided in this Ordinance. Upon approval of a siting permit application, the siting permit authorizing placement of a Small Wireless Facility in a public right-of-way shall not be issued by the Township Clerk to any Applicant unless:
 - 1. All siting permit application fees and escrow fees, as established herein, have been paid; and
 - 2. All other governmental permits or other governmental approvals that are required for the deployment(s) proposed by the Applicant’s siting permit application under the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-119, *et. seq.*, and the administrative regulations adopted thereunder, Chapter 336, Streets and Sidewalks, of the Code of the Township and by any other applicable federal, state or municipal law have been issued by the appropriate issuing authority therefore to the Applicant and the Applicant has supplied copies of such other permits or approvals to the Township Clerk for inclusion with the Applicant’s application documents; and
 - 3. The Applicant has entered into a “Right-of-Way Use Agreement,” the approved form of which is on file in the Office of the Township Clerk and can be obtained during normal business hours. The approved form of “Right-of-Way Use Agreement” may from time-to-time be revised, supplemented or otherwise amended or

replaced. All such revisions, supplements, amendments or replacement shall be approved by Resolution of Township Committee. The Township Clerk shall maintain on file the currently approved Right-of-Way Use Agreement version and shall provide a copy to all siting permit applicants. Minor deviations to the terms and conditions that are set forth in the approved form of Right-of-Way Use Agreement may be approved by Township Committee at the time that it grants consent to use a right-of-way to a siting permit Applicant.

- B. No siting permit authorizing placement of a Small Wireless Facility in a public right-of way shall be issued to any Applicant unless Township Committee, in the manner prescribed by applicable laws of the State of New Jersey, has granted to the siting permit Applicant its consent to use public rights-of-way within the Township. No siting of a Small Wireless Facility shall be permitted within two hundred (200) feet of another Small Wireless Facility unless it can be established by clear and convincing evident that co-location on an existing or previously approved Small Wireless Facility is not feasible. Any claims of carriers of technical incompatibility or inability to collocate need to be proven by the carrier, not disproven by the Township. Responsibility for judging proof of said claims lies solely with the Township and/or its chosen representative(s).

§55-30A.3 Installation of New Structures; Installation on Existing Structures.

- A. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility upon an existing structure in a right-of-way unless the structure is a Smart Pole as set forth in the definitions of this Ordinance.
- B. No Small Wireless Facility shall be installed upon any new structure within any right-of-way unless the new structure is a Smart Pole as defined in the definition section of this Ordinance. A replacement pole is a new structure.
- C. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the Township's Wireless Siting Plan which can be found on file with the Township Clerk. All Small Wireless Facilities must be placed within a twenty-five (25) foot radius of those specific locations set forth on the Township's Wireless Siting Plan. No more than one (1) Smart Pole shall be permitted per intersection or block if the Siting Plan calls for the deployment of a Small Wireless Facility at any location other than an intersection, unless otherwise specified within the Wireless Siting Plan. No Smart Poles shall be located within two hundred (200) ft. of another.

§55-30A.4 Siting Permit Application Process.

- A. Application Filing. An application for a siting permit to place one or more Small Wireless Facility within a right-of-way shall be made on forms which shall be available from the Township Clerk. The application, along with the required application fee and the required escrow fee, shall be filed with the Township Clerk. Immediately upon receipt of an application, the Township Clerk shall provide copies of the application and all supporting documents that were submitted by the applicant with the application, to the Township Engineer, the Construction Official, and the Township Attorney.
- B. Application Form. The Small Wireless Facility siting permit application shall be made by a provider of personal wireless services, or its duly authorized representative as noted in a notarized statement from the provider of personal wireless services on whose behalf the representative is acting, and shall contain the following:
1. The Applicant's name, address, telephone number and email address;
 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 general description of the proposed Small Wireless Facility, existing structure and new structure work to be performed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with particular emphasis on those matters, including, but not limited to, subservice utilities likely to be affected or impacted by the work proposed along with a description of such other governmental permits or approvals as may be required by applicable law with respect to the proposed installation(s) and a description of such other permits or approvals for which the Applicant has applied;
 4. Authorization for any consultant acting on behalf of the Applicant to speak with the Township, or a designee of the Township, on the area of consultation for the Applicant even if the Applicant cannot be available;
 5. Verification from an appropriate professional that the Small Wireless Facility shall comply with all applicable federal, state, and local laws, administrative regulations and codes;
 6. The Applicant shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Applicant shall further certify that they will

encourage, manage and coordinate the location and placement of an interest carrier's equipment on their structure.

- C. An Applicant seeking to deploy a network of Small Wireless Facilities, all of which are to be located in rights-of-way, may file a batched application for up to twenty-five (25) Small Wireless Facilities and receive a single siting permit for multiple Small Wireless Facilities.

§55-30A.5 Procedure on Permit Application; No Exclusive Rights.

- A. The Township shall review the application for a Small Wireless Facility siting permit in light of its conformity with the provisions of this Ordinance, and shall approve a siting permit on nondiscriminatory terms and conditions subject to the following requirements:
- B. Within ten (10) days of receiving an Application, the Township Clerk shall determine and notify the Applicant:
 - 1. Whether the Application is complete;
 - 2. If the Application is incomplete, what specific information is missing; and
 - 3. Whether the deployment of the Small Wireless Facilities as proposed requires the Applicant to apply for other permits, such as a street opening permit or construction permit, for which the Applicant has not yet applied. No Small Wireless Facility siting permit application shall be deemed complete until the Applicant has applied for all other permits and approvals required by all other laws and regulations that are applicable to the Applicant's proposed Small Wireless Facility deployment.
- C. The Township shall make its final decision to approve or deny the Application within the following timeframes:
 - 1. Sixty (60) days from the submission of a complete application to install a Small Wireless Facility upon one or more existing structures.
 - 2. Ninety (90) days from the submission of a complete application to install a Small Wireless Facility upon one or more new structures.
 - 3. Ninety (90) days from the submission of a complete batched application to install Small Wireless Facilities upon both existing and new structures.

The timeframes described above by which an application shall be either approved or denied may be extended by mutual consent of the Applicant and Township. Such consent shall be set forth on a form for such purposes which shall be

available from the Township Clerk. Such consent on behalf of the Township shall be exercised by the Township Committee in their reasonable discretion.

- D. The Township Clerk shall notify the Applicant in writing of the final decision, and if the Application is denied, specify the basis for denial; and cite such specific provisions, as may be recommended, by the Township Attorney, from federal, state, or local laws, administrative regulations or codes as to why the Application was denied.
- E. Notwithstanding an initial denial, the Applicant may cure any deficiencies identified by the Township within thirty (30) days of the denial without paying any additional application fee, provided the Township Clerk shall approve or deny the revised Application within thirty (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial.
- F. If the Township fails to act upon an application within the timeframes prescribed by this section, the Applicant may provide written notice to the Township that the application review and decision period has lapsed. Upon receipt of such notice, the Township Committee, by Resolution adopted no later than its second regularly schedule public meeting next following receipt of the notice, shall either deny the application or direct that the siting permit shall be approved and issued. Nothing in this paragraph is intended in any way to impact any other right or remedy that may be available to the Applicant under applicable federal or state law if the Township fails to act upon an application within the timeframes prescribed by this section.
- G. A siting permit from the Township authorizes an Applicant to undertake only certain activities in accordance with this Ordinance. No approval or consent granted, or siting permit issued, pursuant to this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use any public right-of-way within the Township for the delivery of telecommunications services or for any other purpose.

§55-30A.6 Duration.

No siting permit issued under this Ordinance shall be valid for a period longer than twelve (12) months unless construction has actually begun and continuously and diligently is pursued to completion. Upon written request from the Applicant, the Township Committee, upon consultation with the Construction Official, may extend the siting permit for a period of up to twelve (12) months so long as construction has begun at the time that the Applicant's request for an extension is made.

§410-200 Routing Maintenance and Replacement.

- A. A Small Wireless Facility siting permit shall not be required for:
 - 1. Routine maintenance of a Small Wireless Facility.

2. The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height to the Small Wireless Facility that is being replaced.
- B. On a location where the Township and/or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written authorization from the Township and/or the other provider, as the case may be, to proceed is provided to the Township, which authorization to proceed shall not unreasonably be withheld by the Township and/or the other provider.
 - C. If the replacement of a Small Wireless Facility with another Small Wireless Facility includes replacement of the structure to which the Small Wireless Facility is attached, then an application for a siting permit shall be required.

§55-30A.7 Application Fees.

All applications for approval and issuance of a Small Wireless Facility siting permit pursuant to this Ordinance shall be accompanied by a fee as follows:

- A. For application that do not include the installation of any new structure within a right-of-way the application fee shall be \$500.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).
- B. For applications that include the installation of a new structure within a right-of-way, the application fee shall be \$1,000.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).

§55-30A.8 Escrow Fee for Third-Party Professionals and Consultants.

- A. In addition to the application fee, all applications for approval and issuance of a Small Wireless Facility siting permit shall be accompanied by an escrow fee as follows:
 1. For applications whose proposed Small Wireless Facility deployment(s) will not require a street opening permit pursuant to the Township Code: \$5,000.00.
 2. For applications whose proposed Small Wireless Facility deployment(s) will require a street opening permit pursuant to the Township Code: \$7,500.00.
- B. The escrow account deposits are required to pay for the costs of professional services, including engineering, planning, legal and other

third-party professional consulting expenses connected with the review of submitted materials, including any traffic engineering review or other special analysis related to the Township's review of the material submitted by the Applicant and the preparation of any reports or any necessary legal agreement regarding rights-of-way use. An Applicant is required to reimburse the Township for all fees, costs and expenses of third-party professionals and consultants incurred and paid by the Township for the review process of s Small Wireless Facility siting permit application, such as, but not limited to:

1. Professional fees for review by third-party professionals or consultants of applications, plans and accompanying documents;
 2. Issuance of reports or analyses by third-party professionals or consultants to the Township setting forth recommendations resulting from the review of any documents submitted by the Applicant;
 3. Charges for any telephone conference(s) for meeting(s), including travel expenses, requested or initiated by the Applicant, the Applicant's attorney or any of the Applicant's experts or representatives;
 4. Review of additional documents submitted by the Applicant and issuance of reports or analyses relating thereto;
 5. Review or preparation of right-of-way use agreements, easements, deeds, right-of-way municipal consent Ordinances or resolutions and any and all other like or similar documents; and
 6. Preparation for an attendance at all meetings by third-party professionals or consultants serving the Township, such as the Township Attorney, Township Engineer and Township Planner or other experts as required.
- C. The escrow account deposits shall be placed in a separate account by the Township's Chief Financial Officer at the request of the Township Clerk and an accounting shall be kept of each Applicant's deposit. Thereafter:
1. All third-party professional or consultant fees, costs, expenses and charges shall be paid from the escrow account and charged to the applicant;
 2. Upon either final denial of a Small Wireless Facility siting permit application or upon issuance of a Small Wireless Facility siting permit, any moneys not expended for third-party professional, or consulting services shall be returned to the Applicant within ninety (90) days upon written request by the Applicant and as authorized by the Township Committee;

3. If at any time during the application review process 75% of the money originally posted shall have been expended, the Applicant shall be required to replenish the escrow deposit to 100% of the amount originally deposited by the Applicant;
4. No Small Wireless Facility siting permit application shall be considered complete until such time as the required escrow fee has been posted to guarantee payment of third-party professional or consultant fees, costs, expenses, and charges;
5. All payments charged to the escrow deposit shall be pursuant to vouchers from the third-party professionals or consultants stating the hours spent, the hourly rate and the fees, costs, expenses and charges incurred;
6. Third-party professionals and consultant submitted charges pursuant to this section shall be permitted to charge for such services at the same rates as they would charge their private clients for like or similar work provided that:
 - a. Professional fees are billed at rates that do not exceed such professional fees as are customarily charged by other like professionals and consultants performing similar work within Ocean County; and
 - b. Out-of-pocket costs, expenses and charges are billed on a dollar-for-dollar basis with no mark-up being permitted.
7. The Township shall render a written final accounting to the Applicant on the uses to which the escrow deposit was put. The written final accounting shall include copies of all vouchers that were submitted by third-party professionals and consultants and paid by the Township.

§55-30A.9 Municipal Access to New Structures.

An Applicant whose siting permit includes the installation of any new Smart Pole structure as defined by this Ordinance shall provide the Township with access to any of the technological features that are a component the new Smart Pole structure such as, for example, public access, Wi-Fi, 911 call service or security cameras, before the applicant offers such access to any other person or entity.

Should the Township decide to utilize any such technological features then the Township, on an annual basis, shall reimburse the Applicant or the subsequent owner of the structure, the costs, on a dollar-for-dollar basis, of providing the Township with such access. Such costs shall be limited to the costs of providing electricity to the components used by the Township and the costs of any repairs required to be made to the components used by the Township, unless the repairs costs are necessitated by the acts of the

Applicant or subsequent owner of the structure, without regard to whether such acts are negligent or intentional.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provisions, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This Ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Barnegat on the **9th day of June, 2022, at 10:00 A.M.** and will be considered for second and final passage at a meeting of the Township Committee to be held on the **5th day of July, 2022, at 6:30 PM.** at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

Donna M. Manno, RMC
Municipal Clerk