

ESTABLISHING CHAPTER 435, ENTITLED “SMALL WIRELESS FACILITIES,”

WHEREAS, pursuant to *N.J.S.A. 40:48-1 et seq.*, and *N.J.S.A. 40:48-2 et seq.*, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, not contrary to the laws of the State of New Jersey or of the United States, as it may deem necessary and proper for the good of government, order, and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred by law; and

WHEREAS, the Township Council (“**Township Council**”) of the Township of Verona (the “**Township**”), in the County of Essex (the “**County**”) and State of New Jersey (the “**State**”) are aware that certain technological developments have made access to the Township’s public municipal right-of-way (“**Municipal Right(s)-of-Way**”) desirable to certain telecommunications companies for the placement of small wireless facilities, including, but not limited to, antennas, equipment, cables, wires, conduits and other appurtenances attached to poles used to transmit, receive, distribute and provide personal wireless services and communication services (“**Small Wireless Facilities**”) and cabinets; and

WHEREAS, the Township has determined that its **Municipal Rights-of-Way** constitute a valuable resource to its citizens, finite in nature, by permitting the public to pass freely over and across these Municipal Rights-of-Way without unreasonable obstruction or interference, in a safe and secure manner; and

WHEREAS, the Township recognizes that the use of its Municipal Right-of-Way must be managed carefully with the utmost consideration given to general welfare and best interest of its citizens; and

WHEREAS, the Federal Telecommunications Act (the “**FTA**”) preserves local government’s ability to “manage the public Rights-of-Way...” 47 *U.S.C.* § 253(c); and

WHEREAS, the FTA preserves local government’s authority over the “placement, construction and modification of personal wireless service facilities.” 47 *U.S.C.* § 332(c)(7)(A); and

WHEREAS, the FTA makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. *U.S.C.* § 332(c)(7)(B)(i)(II); and

WHEREAS, the FTA provides that municipalities “shall not unreasonably discriminate among providers of functionally equivalent services.” *U.S.C.* § 332(c)(7)(B)(i)(I); and

WHEREAS, 4G and 5G wireless technology involves the placement of Small Wireless Facilities, poles, and cabinets in the Municipal Right-of-Way; and

WHEREAS, New Jersey municipalities must give consent before a Small Wireless Facility can be placed on an existing pole pursuant to *N.J.S.A. 48:3-19* and *N.J.S.A. 27:16-6*; and

WHEREAS, New Jersey municipalities must give consent to the installation of a new pole within a Municipal Right-of-Way pursuant to *N.J.S.A. 48:17-10*; and

WHEREAS, the installation of Small Wireless Facilities, cabinets, and poles in the Municipal Right-of-Way raise concerns related to sight triangles, minimum sidewalk width and dimensions, access to and from parked vehicles, other safety related issues related to the use of roadways and the ability of the public to pass over the Municipal Rights-of-Way, shade trees and aesthetics; and

WHEREAS, the Federal Highway Administration has acknowledged the problem concerning Municipal Rights-of-Way by stating “[as] demand for the finite space in existing Right-of-Way increases, the difficulty and cost of adding new utility facilities and relocating existing utility facilities also increases.” Federal Highway Administration, *Avoiding Utility Relocations*, <https://www.fhwa.dot.gov/utilities/utilityrelo/2.cfm> (accessed March 22, 2021); and

Commented [1]: Does this prevent carriers from proposing sites outside of the ROW? What about existing facilities that are outside of the ROW?

We can extend Ordinance coverage to include “Public Grounds” (any lands, areas, buildings or installations owned by the Township or any of its departments, agencies or commissions, and shall include, but not be limited to, the Township Board of Education lands, areas, buildings or installations).

WHEREAS, on September 26, 2018, the Federal Communications Commission (the “FCC”) adopted a Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket 17-84 (the “FCC Order”); and

WHEREAS, the FCC Order provides that municipalities can impose aesthetic and location requirements on Small Wireless Facilities and related infrastructure including, but not limited to, poles, antennas, and cabinets, where said requirements are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployment; and, (3) are published in advance; and

WHEREAS, the Township has determined to create a Right-of-Way permit system for all poles, cabinets and Small Wireless Facilities which are proposed to be placed in the Municipal Rights-of-Way; and

WHEREAS, the Planning Board of the Township (the “Planning Board”) is empowered by *N.J.S.A. 40:55D-25* to aid and assist the Township Council in an advisory capacity; and

WHEREAS, the Township has determined that it is necessary to set forth clear standards in relation to the siting of poles, cabinets, and Small Wireless Facilities within the Municipal Rights-of-Way to enhance public safety, preserve the aesthetics of the community, and for the benefit of its citizens, utilities and telecommunications providers which use, or will seek to make use of, the Municipal Right-of-Way.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Verona, in the County of Essex and the State of New Jersey, as follows:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. The Township hereby amends, revises and supplements Chapter 460 of Code of the Township of Verona (the “Code”), entitled “Streets and Sidewalks,” by adding Chapter VIII, entitled “Municipal Right-of-Way” to provide standards for siting poles, cabinets and Small Wireless Facilities in the Municipal Right-of-Way as follows:

§435-1 Purpose and Intent

- a) **Purpose.** The purpose of this Chapter is to establish uniform, nondiscriminatory standards for the placement, installation and construction of Small Wireless Facilities (as hereinafter defined) within the Municipal Right-of-Way (as hereinafter defined) within the Township's jurisdiction in a manner that will provide public benefit and will preserve the integrity, public safety and aesthetics of the Municipal Right-of-Way, and community character.
- b) **Intent.** The intent of the standards established herein is to facilitate deployment of facilities that provide for the public benefits of advanced communications services, while providing for proper management of the Municipal Right-of-Way in a manner that complies with all applicable State and federal laws and regulations. In fulfilling this intent, this Chapter is designed to prevent:
 - i. Interference with the use of streets, sidewalks, alleys, bikeways, and other public ways and places;
 - ii. Creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - iii. Interference with facilities and operation of facilities lawfully located in or near Municipal Rights-of-Way;
 - iv. Environmental damage, including damage to trees; and
 - v. Degradation to the character of the areas of the Township in which Small Wireless Facilities are installed.
- c) **Conflicts.** To the extent any previously adopted provisions of this Code conflict with this Chapter, this Chapter supersedes all such provisions.

§ 435-2 Definitions

For the purposes of this chapter, the following terms shall be defined as described herein.

- a) “Anticipated Municipal Expenses” means the cost of processing an Application including, but not limited to, all professional fees such as engineer and attorney costs incurred by the Township and its agents, employees, and contractors.

- b) “Applicant” means the person or entity seeking to place a Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way that submits an Application, and the agents, employees, and contractors of such person or entity.
- c) “Application” means either a New ROW Installation Application or an Existing ROW Installation Application, submitted by an Applicant to the Township for purposes of procuring a Right-of-Way Permit.
- d) “Cabinet” means a small box-like or rectangular structure used to facilitate utility or Personal Wireless Service.
- e) “Collocation” means to install or mount equipment, Cabinets or Small Wireless Facilities on, under, or within a pre-existing communications facility, Pole, Existing Pole, Cabinet, Existing Cabinet or other support structure in the Municipal Right-of-Way.
- f) “Existing Facility” means an Existing Small Wireless Facility, Existing Cabinet, or Existing Pole that is in lawful existence within the Municipal Right-of-Way.
- g) “Existing Cabinet” means a Cabinet that is in lawful existence within the Municipal Right-of-Way, including ground mounted and at grade installations.
- h) “Existing Pole” means a Pole that is in lawful existence within the Municipal Right-of-Way.
- i) “Existing Small Wireless Facility” means an Existing Small Wireless Facility that is in lawful existence within the Municipal Right-of-Way.
- j) “Existing Provider” means the entity currently utilizing any Small Wireless Facility within the Municipal Right-of-Way.
- k) “Existing ROW Installation Application” means a formal written request in compliance with the requirements as established by the Township for Right-of-Way Permit to construct or install a Small Wireless Facility on an Existing Facility within a Municipal Right-of-Way submitted by an Applicant to the Township Engineer in accordance with this Chapter.
- l) “FCC Order” means the Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket 17-84 adopted on September 26, 2018.
- m) “FCC” means the Federal Communications Commission.
- n)
- o) “Municipal Right(s)-of-Way” or “Right(s)-of-Way” or “ROW” means the surface of, and the space above or below, any public street, road, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Township as an easement or in fee simple ownership, or any other area that is determined by the Township to be a right-of-way in which the Township may allow the installation of Small Wireless Facilities, Cabinets and Poles. This term ~~shall may~~ also include County Rights-of-Way where the County requires the approval of the Township pursuant to *N.J.S.A. 27:16-6* for the use of same.
- p) “New Infrastructure Installation” means any Proposed Pole or Proposed Cabinet.
- q) “New ROW Installation Application” means a formal written request in compliance with the requirements as established by the Township for a Right-of-Way Permit to construct or install a Pole or Cabinet in a Municipal Right-of-Way submitted by an Applicant to the Township Engineer in accordance with this Chapter.
- r) “Permittee” means an Applicant that has obtained a Right-of-Way Permit.
- s) “Personal Wireless Service” means a type of ‘commercial mobile radio service’ (as that term is defined in 47 CFR 20.3), unlicensed wireless services (as that term is defined in 47 U.S.C. 332 (c)(7)(C)(iii) and common carrier wireless exchange access services, and provided by the use of ‘personal wireless service facilities’ (as such phrase is defined in 47 U.S.C. 332(c)(7)(C)(ii)).
- t) “Pole” means a long, slender, piece of wood, metal, fiberglass composite, or other materials, including, but not limited to, decorative streetlights, non-decorative streetlights and traffic signal structures.
- u) “Preferred Location” is defined in §435-6(b)(iii).
- v) “Professional Survey” means a raised seal stamped survey completed by a duly licensed surveyor.
- w) “Proposed Cabinet” means a Cabinet that is proposed to be placed within the Municipal Right-of-Way.
- x) “Proposed Facility” means a Proposed Pole, Proposed Cabinet, or Proposed Small Wireless Facility.
- y) “Proposed Pole” means a Pole that is proposed to be placed within the Municipal Right-of-Way.

Commented [2]: What about the State Right-of-Way? Route 23 runs through Verona.

Commented [3R2]: We are reviewing

- z) "Proposed Small Wireless Facility" means a Small Wireless Facility that is proposed to be placed within the Municipal Right-of-Way
- aa) "RF Emissions" means the radio frequency power transmitted from a Small Wireless Facility.
- bb) "Right-of-Way Installation" means the Pole, Cabinet and/or Small Wireless Facility installed within the Municipal Right-of-Way in accordance with a Right-of-Way Permit.
- cc) "Right-of-Way Use Agreement" means an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way.
- dd) "Right-of-Way Permit" means the permit issued by the Township following approval from the Township which sets forth that the Applicant is in compliance with the requirements of this Chapter.
- ee) "Small Wireless Facility/ies" means antennas, equipment, cables, wires, conduits and other appurtenances attached to Poles or located within Cabinets used to transmit, receive, distribute and provide Personal Wireless Services and communication services and as further defined in the FCC Order.
- ff) "State" means New Jersey.
- gg) "Surrounding Streetscape" means existing Poles within the same Right-of-Way, which are located within five hundred (500) feet of the Proposed Pole.
- hh) "Township Council" means the Township Council of the Township of Verona.
- ii) "Township Clerk" means the person appointed to be the Township Clerk for the Township of Verona pursuant to N.J.S.A. 40A:9-133
- jj) "Township Engineer" means the person appointed to be Township Engineer for the Township of Verona pursuant to N.J.S.A. 40A:9-140 or its designee.
- kk) "Utility" means electric, telephone, ~~or~~ cable service, water or sewage.
- ll) "Website" means the website developed, operated, maintained and updated by Permittees which provides information about any New Infrastructure Installation.

Commented [4]: Utility Service is not used in this ordinance. Should it be changed to Utility? Also, can we add water and sewage?
We added water and sewage, however, note that if this eliminates large areas of ROW, that could be seen to be an effective prohibition of telecom service in violation of the FCC Order

§ 435-3 Applicability.

- a) Except as otherwise provided in this Chapter, all Small Wireless Facilities, Cabinets and Poles that are proposed to be placed within the Municipal Right-of-Way by a person or entity shall be subject to the standards and procedures set forth within this Chapter, and shall be required to:
 - i. obtain a Right-of-Way Permit for the siting and installation of the Small Wireless Facilities, Cabinets and Poles within the Municipal Right-of-Way; and
 - ii. enter into a Right-of-Way Use Agreement with the Township.

§ 435-4 Right-of-Way Permits for Small Wireless Facilities, Cabinets and Poles; Access to Municipal Right-of-Way.

- a) **Right-of-Way Permit.** No person or entity shall operate, construct, install, place, or replace any type of Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way without first (1) obtaining a Right-of-Way Permit pursuant to the provisions of this Chapter, and (2) executing a Right-of-Way Use Agreement with the Township. A separate Right-of-Way Permit is required for each location within the Municipal Right-of-Way at which a Small Wireless Facility, Cabinet or Pole is to be installed. Right-of-Way Permits may be combined as determined by the Township. Each Small Wireless Facility, Cabinet or Pole for which a Right-of-Way Permit is issued must comply fully with:
 - i. All applicable provisions of this Chapter;
 - ii. All conditions imposed upon the issuance of the Right-of-Way Permit;
 - iii. All terms and obligations as set forth in the Right-of-Way Use Agreement with the Township;
 - iv. All other applicable federal, State and Township codes, laws and regulations pertaining to the installation, operation, and maintenance of the Small Wireless Facility, Cabinet or Pole.
- b) **Issuance of Right-of-Way Permit.** A Right-of-Way Permit will be issued by the Township upon:
 - i. Approval of an Application submitted by an Applicant pursuant to this Chapter;
 - ii. Applicant's submission of proof of insurance as required by the Right-of-Way Use Agreement;
 - iii. Posting of financial security as required by the Right-of-Way Use Agreement;
 - iv. Payment of all Application fees, escrow fees, and other outstanding fees or amounts that are due and owing pursuant to this Chapter;

- v. Fulfillment of all other conditions established by the Township as a pre-requisite to the issuance of the Right-of-Way Permit; and
 - vi. Applicant entering into a Right-of-Way Use Agreement with the Township in accordance with this Chapter.
- c) Other Required Permits. Prior to commencing any work authorized under a Right-of-Way Permit pursuant to this Chapter, the Applicant must also obtain all other permits and licenses that are required by the Township for carrying out the work, including but not limited to:
- i. road opening permits;
 - ii. construction permits;
 - iii. excavation permits;
 - iv. obstruction permits;
 - v. traffic control permits; and
 - vi. any other permits required under the laws and statutes of the State of New Jersey, the County Code/Ordinances of the County, and/or Township Code/Ordinances of the Township including, but not limited to, the Uniform Construction Code.
- d) Permits to be displayed. A copy of all permits and licenses required by the Township must be available for inspection at the work site at all times during the construction, placement, replacement, or installation of Small Wireless Facility, Cabinet or Pole. Failure to display copies of all permits required under this Chapter shall be a violation of § 435-11 and shall be subject to the penalties set forth therein.
- e) Current Violations as Grounds for Denial. The Township may deny a Right-of-Way Permit sought by an Applicant who (i) is currently in violation of any of the provisions of this Chapter regarding other Small Wireless Facilities, Cabinets or Poles placed or installed by the Applicant subsequent to the effective date of this Chapter or (ii) is in violation of any Right-Of-Way Use Agreement executed by the Township and the Applicant.
- f) Effect of Right-of-Way Permit; Authority Granted; No Property Right or Other Interest Created.
- i. A Right-of-Way Permit from the Township authorizes an Applicant to undertake only certain activities in accordance with this Chapter and the Right-of-Way Use Agreement.
 - ii. A Right-of-Way Permit does not authorize the use of support structures owned by the Township unless an agreement for the use of such support structures has been authorized by the Township.
 - iii. A Right-of-Way Permit does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Municipal Right-of-Way.
- g) Duration of Right-of-Way Permit. A Right-of-Way Permit issued under this section shall be valid for a period of six (6) months after issuance. Upon written request from the Applicant made prior to the expiration of the initial six (6) month period, the Township Engineer, may extend the duration of the Right-of-Way Permit for a period of up to twelve (12) months.
- h) Failure to obtain Right-of-Way Permit. It is a violation of this Chapter to construct, install, or place a Small Wireless Facility, Cabinet or Pole in a Municipal Right-of-Way without obtaining a Right-of-Way Permit as required herein. Each day any such communications facility or any components of any such facility remain in the Municipal Right-of-Way will be considered a separate violation, subject to the penalties provided in § 435-11, until an Application meeting the requirements of this Chapter is submitted and approved by the Township. In addition to any penalties that may be imposed for a violation of this Chapter, the violator will be subject to the following provisions:
- i. Where construction, placement or installation of a Small Wireless Facility, Cabinet or Pole has been commenced without a Right-of-Way Permit, the work will be subject to issuance of a stop work order and the Application fee for such facility will be doubled. Additionally, the Township may (a) require removal of the Small Wireless Facility, Cabinet or Pole, as applicable, from the Municipal Right-of-Way and restoration of the Municipal Right-of-Way by the violator, and (b) hold the violator liable for any additional costs the Township incurs for inspection of the work and enforcement of this section.
- i) Exceptions. Notwithstanding the foregoing, no Right-of-Way Permit is required for:
- i. Relocations and modifications (a) performed at the Township's direction pursuant to § 109 or (b) permitted by a Right-of-Way Use Agreement; or
 - ii. General maintenance and responses to outages, malfunctions, and other emergencies involving an Existing Facility, provided that:

1. The Existing Facility owner must provide notice of the work to be performed as required by the notice provisions of the Right-of Way Use Agreement;
2. Any response involving excavations, construction work, or redirection of vehicular or pedestrian traffic must be coordinated with the Township and all applicable permits must be attained; and
3. Any increases to the physical dimensions or other permanent changes to the appearance of the Existing Facility beyond the scope of the Right-of-Way Use Agreement will require a new Right-of-Way Permit.

§ 435-5 Right-of-Way Use Agreement Required:

- a) Right-of-Way Use Agreement. No person shall operate, construct, place or install any type of Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way without first entering into a Right-of-Way Use Agreement with the Township. The terms of the Right-of-Way Use Agreement shall include, but not be limited to:
- i. A term as established in the Right-of-Way Use Agreement but not to exceed five (5) years, subject to automatic renewal for four (4) additional five (5) year terms pending termination as set forth in the Right-of-Way Use Agreement;
 - ii. Collocation requirements;
 - iii. Reasonable insurance requirements;
 - iv. Reasonable performance bond requirements;
 - v. Indemnification requirements;
 - vi. Fee schedule;
 - vii. A fine for unauthorized installations;
 - viii. Requirements regarding repair, maintenance and relocation of the equipment;
 - ix. A provision requiring that all Small Wireless Facilities, Cabinets or Poles be removed from the Municipal Right-of-Way at the end of the Right-of-Way Use Agreement's term;
 - x. A reference to the siting standards set forth in this Chapter;
 - xi. Provision for public notice of installation of Small Wireless Facilities, Poles and Cabinets, including but not limited to, the development of a website and mailed notice of installation, as applicable;
 - xii. Provision regarding removal of installations due to a change in federal, State or local law;
 - xiii. Any other items which may reasonably be required for the Applicant's operation within the Municipal Right-of-Way.

§ 435-6 Siting Standards for Small Wireless Facilities, Poles, and Cabinets, within the Municipal Right-of-Way; Collocation of Small Wireless Facilities.

- a) Right of Way Permit Required. No Small Wireless Facility, Pole, or Cabinet shall be operated, constructed, placed or installed in the Municipal Right-of-Way without the issuance by the Township of a Right-of-Way Permit in accordance with this Chapter.
- b) Siting Standards Applicable to All Small Wireless Facilities, Poles and Cabinets within the Municipal Right-of-Way. All Small Wireless Facilities, Poles and Cabinets within the Municipal Right-of-Way are subject to the following standards:
- i. Each proposed, new, or replaced Small Wireless Facility, Pole or Cabinet within the Municipal Right-of-Way must:
 1. Be compatible in size, mass, and color to similar Small Wireless Facilities, Poles and Cabinets in the immediate area, be finished or painted and otherwise camouflaged in conformance with best available stealth technology methods, with a goal of blending in compatibly with its background and minimizing the physical and visual impact on the area and surrounding properties, all as approved by the Township. Notwithstanding the foregoing, a new Small Wireless Facility, Pole or Cabinet must be designed using camouflaging techniques that make it as unobtrusive as possible if:
 - a) It is not possible or desirable to match the design and color of a new facility or support structure with the Existing Facilities or existing support structures in the immediate area; or
 - b) Existing Facilities or existing support structures in the surrounding area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the Township.

2. Allow adequate room for the public to pass and repass along and across the public portion of the Municipal Right-of-Way.
 3. Be in compliance with the FCC RF Emissions exposure guidelines and all applicable law.
 4. Be designed by a qualified engineer licensed by the State, and must meet all applicable building and electrical code standards.
 5. Be located and designed so as to avoid interference with maintenance activities within the Municipal Right-of-Way such as:
 - a) Grass mowing, brush collection, tree trimming, snow removal and landscaping maintenance;
 - b) Trash collection;
 - c) Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
 - d) Maintenance of other facilities in the Municipal Right-of-Way.
 6. Be designed to prevent interference with public safety communications, traffic signal systems, or other government communications. If a potential problem is identified, the Township may require Applicants to provide a technical evaluation to identify any potential interference and implement corrective solutions to resolve the problem.
- ii. A Small Wireless Facility, Pole or Cabinet within a Municipal Right-of-Way must not:
1. Obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within a Municipal Right-of-Way, except for authorized temporary lane or sidewalk closures;
 2. Obstruct the legal use of the Municipal Right-of-Way by Utility providers and other authorized Municipal Right-of-Way users;
 3. Inhibit any sight triangles;
 4. Obstruct, block or interfere with traffic signal systems;
 5. Result in a violation of the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); or
 6. Violate other Municipal Right-of-Way management provisions adopted by the Township.
- iii. Preferred Locations for Poles and Cabinets.
1. Order of preference. The following locations, in the order listed, are the Preferred Locations within the Township for installation of Poles or Cabinets in Municipal Rights-of-Way:
 - a) non-municipal owned Existing Facilities
 - b) Industrial areas as identified on the Township Zoning Map as []
 - c) Commercial areas as identified on the Township Zoning Map as []
 2. Non-preferred locations. A Pole or Cabinet may be permitted in a location other than a Preferred Location identified in this section if the Applicant provides evidence, as required and determined by the Township Engineer or Planning Board, as applicable, showing that:
 - a) Adequate coverage can be maintained, existing services can be improved, or new services can be added only if the Proposed Pole or Proposed Cabinet is placed in a non-preferred location; and
 - b) The Proposed Pole or the Proposed Cabinet will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area.
- c) Pole Specific Siting Standards.
- i. Height. No Pole shall be taller than thirty-five (35) feet or one hundred and ten percent (110%) of the height of poles in the Surrounding Streetscape, whichever is higher.
 - ii. Color and Diameter of Proposed Poles. Proposed Poles must be no more than thirteen (13) inches in diameter with a surface that is powder-coated and black, brown or dark green color, or as otherwise set forth in the Right-of-Way Use Agreement.

Commented [5]: What about municipal owned facilities?

Commented [6R5]: For consideration by the Township, however, as a preferred location we recommend non-municipal facilities

Commented [7]: Township to provide preferred locations within Industrial/commercial zones as applicable

Commented [8]: Township to review and confirm

- iii. Material of Proposed Poles. Proposed Poles must be made of a material as approved by the Township Engineer and consistent with the requirements of the Right-of-Way Use Agreement.
 - iv. Distance from the curb line. No Pole shall be farther than eighteen (18) inches from the curb line or nearest traffic lane.
 - v. Distance from Obstructions. Proposed Poles shall be a minimum of four (4) feet from any and all obstructions.
 - vi. Proposed Poles are prohibited:
 - 1. in areas where ~~Utility~~telecommunications facilities are underground.
 - 2. adjacent to any street that is twenty (20) feet or less in width, excluding additional lanes at intersections
 - vii. No Pole shall be constructed in the Municipal Right-of-Way unless it:
 - 1. is replacing an Existing Pole; or
 - 2. is approved pursuant to a land development application by the Township's Planning Board pursuant to a land use application; or
 - 3. is in the Municipal Right-of-Way in a Preferred Location, unless as otherwise provided in this Chapter; and
 - 4. is at least two hundred (200) linear feet from any other Existing Pole or Proposed Pole along the same side of the street; and
 - 5. complies with the requirements set forth in this Chapter and the Right-of-Way Use Agreement.
 - viii. All Proposed Poles shall be designed and constructed to accommodate maximum Collocation of Small Wireless Facilities.
- d) Small Wireless Facility Specific Siting Standards.
- i. Small Wireless Facilities are permitted on Poles, provided that each Small Wireless Facility:
 - 1. Does not exceed three (3) cubic feet in volume;
 - 2. All other wireless equipment associated with the Pole, including wireless equipment associated with the Small Wireless Facility and any pre-existing associated equipment on the Pole does not exceed twenty-eight (28) cubic feet in volume; and
 - 3. The Pole does not exceed the higher height of:
 - a) Thirty-five (35) feet above ground level; or
 - b) One hundred and ten percent (110%) of the height of a Small Wireless Facility in the nearest Surrounding Streetscapes.
 - 4. Does not extend more than fourteen (14) inches past the edge of the Pole. Such equipment must be at least sixteen (16) feet above ground level.
 - ii. Cabinet Specific Siting Standards. No Cabinet shall exceed sixteen (16) cubic feet in volume.
- e) Collocation of Small Wireless Facilities.
- i. Collocation of Small Wireless Facilities with non-municipal facilities. Collocation of Small Wireless Facilities with non-municipal Existing Facilities is preferred by the Township over new support structures.
 - ii. Collocation with Township-owned Poles, Small Wireless Facilities, and Cabinets. A Small Wireless Facility may be attached to a Township-owned Pole or support structure within a Municipal Right-of-Way only if the owner of the Small Wireless Facility has entered into a duly authorized Right-of-Way Use Agreement with the Township establishing the terms and fees for the attachments in addition to the application fees and annual fees established in this Chapter. Upon approval of a Right-of-Way Use Agreement, and any other required agreement, by the Township Council and issuance of a Right-of-Way Permit and all other applicable permits, an Applicant may Collocate a Small Wireless Facility on the following, in order of preference:
 - 1. Non-Township owned Existing Poles, structures and facilities;
 - 2. Township owned Existing Poles;
 - 3. Non-decorative streetlights;
 - 4. Non-decorative traffic signal structures; or
 - 5. Other Township owned facilities.
 - iii. Collocation of municipal equipment on wireless facilities. The Township may require a Right-of-Way Permit holder under this Chapter to allow placement of a streetlight, camera, and other equipment on a support structure owned by the

Commented [9]: Is this applicable to Verona?

Commented [10R9]: I don't think so but the Engineer needs to look into this.

Right-of-Way Permit holder if the structure can accommodate such equipment without interfering with the Right-of-Way Permit holder's use of the structure. Unless otherwise agreed, the Township will maintain ownership of all such streetlights, cameras, and other equipment and will be solely responsible for their installation, operation, and maintenance. The owner of a support structure on which Township equipment has been placed may be eligible for a waiver or reduction in the fee required under § 435-8 herein.

- f) To the extent applicable, the standards established in this section shall remain in effect while a Small Wireless Facility, Cabinet or Pole remains in a Municipal Right-of-Way.
- g) The Township may require that an Applicant provide a certification from a licensed engineer attesting to the structural integrity of any Small Wireless Facility, Cabinet or Pole.

§ 435-7 Application Process

- a) Pre-application Meeting. Prior to making a formal Application to the Township for use of the Municipal Right-of-Way, all Applicants are advised to meet with the Township Engineer to review the scope of the Applicant's proposal which may include on-site review of Proposed Poles or Proposed Cabinets with the Township Engineer.
- b) Application Form. The form of Application for Right-of-Way Permit shall be provided by the office of the Township Engineer. Every Application, including both New ROW Installation Applications and Existing ROW Installation Applications, made under this Chapter must include, without limitation, the following information:
 1. The Applicant's name, address, telephone number and e-mail address;
 2. The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors, and subcontractors, if any, acting on behalf of the Applicant with respect to the filing of the Application (if applicable) or performance of the work for which a Right-of-Way Permit is being sought;
 3. A general description and location of every Proposed Facility, and 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, contractor, and subcontractor, if any, acting on behalf of the Applicant to speak with the Township, or a designee of the Township, on the area of the consultation for the Applicant even if the Applicant cannot be available;
 5. Original Certificates of Incorporation and/or Certificates of Good Standing from the Secretary of the State of New Jersey evidencing authorization for the Applicant and its consultants, contractors, and subcontractors, if any, to do business in the State;
 6. a certification from the Applicant, in a form approved by the Township, that the Proposed Facility complies with all applicable federal, State, and Township requirements, including but not limited to laws and regulations pertaining to:
 - a) Environmental matters;
 - b) Historic preservation;
 - c) RF Emissions; and
 - d) The Americans with Disabilities Act.; and
 7. A compliance report certified by a qualified engineer or professional, as approved by the Township, ensuring compliance of all Small Wireless Facilities with the FCC RF Emissions exposure guidelines. If the FCC adopts a superseding RF Emission standard, such new standard shall be controlling and become effective as directed in the FCC rulemaking. In such event, the Applicant shall, within forty-five (45) days of the superseding emission standard's effective date, submit to the Township Engineer documentation of compliance with the superseding RF Emission standard. Failure to submit such documentation shall result in a declaration

- by the Township Engineer that the equipment is no longer operative, and the removal provision stated in § 435-9 shall apply;
8. 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 any interested carrier's equipment on their structure; and
 9. Any other information required by the Township Engineer as set forth in the form Application.
- c) Timeframe for Review. The Township's review of all Applications made under this Chapter shall be expedited to comply with the "shot clocks" set forth in the FCC Order as applicable.
- i. Within ten (10) days of receiving an Application, the Township Engineer shall determine and notify the Applicant:
 1. Whether the Application is complete; and
 2. If the Application is incomplete, what specific information is missing.
 - ii. The Township shall endeavor to make its final decision to approve or deny an Application within the following timeframes:
 1. Sixty (60) days from the submission of a complete Existing ROW Installation Application.
 2. Ninety (90) days from the submission of a complete New ROW Installation Application.
 3. Ninety (90) days from the submission of a complete Application to install multiple Small Wireless Facilities upon both (1) Existing Poles or structures, and (2) Proposed Poles or structures.
 - iii. The timeframes described above by which an Application shall be either approved or denied may be extended by: (1) mutual consent of the Applicant and the Township Engineer in writing; or (2) by the Township in accordance with the FCC Order and applicable law.
- d) Application Approval. The Township Council shall, by resolution, (i) authorize the execution of all Right-of-Way Use Agreements and (ii) approve all Proposed Facilities based upon the recommendations provided to it by the Township Engineer or Planning Board pursuant to subsections (e) and (f) below.
- e) New ROW Installation Application, Required for Proposed Poles and Proposed Cabinets.
- i. Submission of New ROW Installation Application. Applicants who wish to construct or install a Proposed Pole or Proposed Cabinet within the Municipal Right-of-Way must submit a New ROW Installation Application to the Township Engineer.
 - ii. Contents of New ROW Installation Application. In addition to the contents set forth in § 435-7(b), New ROW Installations Applications shall include but not be limited to the following:
 1. a stamped Professional Survey prepared by a New Jersey licensed land surveyor demonstrating that any Proposed Pole or Proposed Cabinet is located within the Municipal Right-of-Way. Any Application which does not include such Professional Survey shall immediately be deemed incomplete.
 2. Documentation outlining Collocation efforts undertaken by Applicant for each Proposed Pole or Proposed Cabinet, as applicable, and demonstrating the need for the New Infrastructure Installation.
 - iii. Review by Planning Board.
 1. Upon receipt of a complete New ROW Installation Application from an Applicant, the Township Engineer will forward the application to the Planning Board for review for compliance with the requirements set forth in this Chapter. The Planning Board shall, pursuant to N.J.S.A. 40:55D-25(b)(3), review the New ROW Installation Application and approve or deny the Application. If the Planning Board denies such Application, it shall set forth the factual basis for such denial in writing, and the Applicant shall have thirty (30) days or longer as agreed to in writing from the Township Engineer, from the issuance of said denial to cure such

- deficiencies before it will be required to submit a new Application. The Planning Board shall set forth the factual basis for approval of Applications in writing.
2. Upon receipt of a written recommendation from the Planning Board, the Right-of-Way Use Agreement shall proceed to Township Council for consideration.
- iv. Waiver. The Planning Board may waive any siting standard set forth in this Chapter where the Applicant demonstrates, as determined by the Planning Board, that:
1. Strict enforcement of said siting standard will:
 - a) Materially inhibit the Applicant's ability to provide communication services; or
 - b) Prohibit or have the effect of prohibiting Applicant from providing any interstate or intrastate telecommunications service, pursuant to 47 U.S.C. § 253(a); or
 - c) Prohibit or have the effect of prohibiting Personal Wireless Service, pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(II).
 2. Applicant will take measures to minimize any negative physical, visual, or other impact from deviating from the standards established in this Chapter.
- f) Existing ROW Installation Application, Required for Proposed Small Wireless Facilities.
- i. Submission of an Existing ROW Installation Application. Applicants who wish to construct, install, place or replace a Small Wireless Facility on an Existing Facility within the Municipal Right-of-Way must submit an Existing ROW Installation Application to the Township Engineer.
 - ii. Contents of Existing ROW Installation Application. Existing ROW Installation Applications shall include the contents set forth in § 435-7(b).
 - iii. Review by Township Engineer.
 1. Upon receipt of a complete Existing ROW Installation Application, the Township Engineer shall review the Application and approve or deny such Existing ROW Installation Application. If the Township Engineer recommends a denial of such Application, they shall set forth the factual basis for such denial in writing, and the Applicant shall have thirty (30) days or longer, as agreed to in writing from the Township Engineer, from the issuance of said denial, to cure such deficiencies before it will be required to submit a new or revised Application. The Township Engineer shall set forth the factual basis for approval of Applications in writing.
 2. Upon approval of the Existing ROW Installation Application from the Township Engineer, the Right-of-Way Use Agreement shall proceed to Township Council for consideration.
 - iv. Waiver. The Township Engineer may waive any siting standard set forth in this Section where the Applicant demonstrates that:
 1. strict enforcement of said siting standard will:
 - a) Materially inhibit the Applicant's ability to provide communication services; or
 - b) Prohibit or have the effect of prohibiting Applicant any interstate or intrastate telecommunications service, pursuant to 47 U.S.C. § 253(a); or
 - c) Prohibit or have the effect of prohibiting Personal Wireless Service, pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(II); or
 2. Applicant will take measures to minimize any negative physical, visual, or other impact from deviating from the standards established in this Chapter.

§ 435-8 Right-Of-Way Permit Application Fees, Anticipated Municipal Expenses; Performance Bond Requirements; and Annual Reporting Requirements.

- a) Application Fees. Every Application for a Right-of-Way Permit must include an application fee in the following amounts:
 - i. One (1) to five (5) Collocations on Existing Poles – five hundred dollars (\$500.00) non-recurring fee.
 - ii. Each additional Collocation on an Existing Pole beyond five – one hundred dollars (\$100.00) non-recurring fee per Collocation.

- iii. New Pole (i.e., not a Collocation) – one thousand dollars (\$1,000) non-recurring fee.
- b) Deposit toward Anticipated Municipal Expenses.
 - i. In addition to the Application fees, the Township Engineer may, in his or her own discretion, require the posting of an escrow in the amount of five thousand dollars (\$5,000.00) towards Anticipated Municipal Expenses including, but not limited to, engineer, legal or other municipal fees related to review of an Application under this Chapter.
 - ii. The Applicant's deposit shall be deposited in an escrow account. If at any time such deposit contains insufficient funds to enable the Township to conduct its review of the Application, the Chief Financial Officer, or their designee, shall provide the Applicant with notice of an insufficient balance. The Applicant shall deposit within ten (10) calendar days of such notice, such additional deposit as shall be agreed upon by the Applicant and the Chief Financial Officer, or their designee, to complete the Township's review.
 - iii. The Chief Financial Officer shall, upon request by the Applicant after a final decision has been made by the Township Council in accordance with this Chapter regarding the Applicant's Application, refund to the Applicant any unused balance from the Applicant's escrow deposit.
- c) Recurring Annual Fee. All Applicants and Existing Providers shall pay a recurring annual Right-of-Way fee to the Township in the amount of two hundred seventy dollars (\$270.00) per installation of each Small Wireless Facility.
- d) Payment due dates.
 - i. All Application fees and the deposit toward Anticipated Municipal Expenses shall be paid to the Township upon submission of an Application to the Township Engineer.
 - ii. Payment dates for the Recurring Annual Fee shall be established in the Right-of-Way Use Agreement.
- e) Late Payment. A ten percent (10%) late payment penalty shall be imposed against any Permittee who fails to pay any fee due under this Chapter within thirty (30) days of the date on which the fee is due.
- f) Removal. When a Small Wireless Facility has been removed, no further fees will be due. There shall be no proration of the recurring annual fees due or paid for a Small Wireless Facility that has been removed.
- g) Corrections. The Township or its duly authorized agents may audit the itemization of Small Wireless Facilities and payment calculations provided by an owner to verify their accuracy. If the Township determines that the owner has paid less than the amount due, the Township will bill the owner for the additional amount due, plus a ten percent (10%) late payment charge. At the Township's request, the owner will provide all records necessary to verify the owner's calculations to the Township or its agents.
- h) Fee waivers and reductions. Any fee required under this Chapter may be waived or reduced for Small Wireless Facilities, Poles, or Cabinets shared with the Township, including Small Wireless Facilities used for placement of lights, cameras, or other equipment on Poles, Cabinets, or other support structures that are subject to this Chapter. A waiver or reduction in the fee otherwise due from the owner of the Small Wireless Facility, Pole, or Cabinet will be effective only if established in a written agreement between the owner and the Township.
- i) Performance Bond. In addition to the foregoing fees and deposits, the Applicant shall provide a performance bond from a duly authorized surety company authorized to do business in the State of New Jersey, and acceptable to the Township, that will cause the Poles, associated equipment, Cabinets, Small Wireless Facilities, and all other related improvements to the Municipal Right-of-Way to be removed, at no cost to the Township, when the same are no longer operative. The amount of the performance bond shall not be less than one hundred twenty percent (120%) of the cost (as determined by the Township Engineer at the time of the Application) of such demolition, removal, and restoration of the site to a state required under applicable Township Code/Ordinances. Said performance bond shall be held in the custody of the Township Clerk.
- j) Annual Reporting Requirements. Each owner of a Small Wireless Facility, Pole, or Cabinet within a Municipal Right-of-Way must file an annual report with the Township Engineer.

Commented [11]: Is this the maximum we can charge?

Commented [12R11]: NJSA 54:30A-124 limits ROW fees to "reasonable fees for actual services made by any municipal, regional or county governmental agency". This is the presumptively reasonable recurring fee established in the FCC Order. We are seeing telecom providers push back on this fee in the ROW agreements, asking for what "actual services" this fee covers. Increasing the fee would require identifying costs for actual services provided by the Township in managing the ROW.

- i. The Township Engineer shall establish the due date, reporting standards, and format for the annual report. The report must include:
 1. The name, title, mailing address, telephone number, and e-mail address of the owner and lessee(s) of the Small Wireless Facility, Pole, or Cabinet, and primary and secondary contact persons in matters related to the operation and maintenance of Small Wireless Facility, Pole, or Cabinet;
 2. Whether or not the Small Wireless Facility, Pole, or Cabinet is actively used;
 3. The status of all pending projects involving the Municipal Rights-of-Way, including estimated timetables and completion dates;
 4. As-built maps depicting the location of all Small Wireless Facilities, Poles, and Cabinets and appurtenances in the Municipal Rights-of-Way;
 5. Verification of compliance with FCC guidelines on RF Emissions;
 6. Ongoing proof of compliance with insurance and financial security requirements; and
 7. Such additional information as may be required by the Township Engineer to fully assess the status of each facility and verify that the Right-of-Way is not occupied by equipment that is not permitted or no longer needed.
- ii. Failure to submit an annual report shall be considered a violation of this Chapter and shall be subject to the penalties provided in § 435-11.

§ 435-9 Removal, relocation or modification of a Right-of-Way Installation.

- a) Notice. Within sixty (60) days following written notice from the Township, the Applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Right-of-Way Installation whenever the Township has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance or installation of any Township improvement in or upon, or the operations of the Township in or upon, the Municipal Right-of-Way. The Township shall apply the same standards to all utilities in the Municipal Right-of-Way.
- b) Emergency removal or relocation of facilities. The Township retains the right and privilege to cut power to or move any Right-of-Way Installation, as the Township may determine to be necessary, appropriate or useful in response to any public welfare emergency or safety emergency. If circumstances permit, the Township shall notify the Applicant and provide the Applicant an opportunity to move its own facilities prior to cutting power to or removing the Right-of-Way Installation and in all cases shall notify the Applicant after cutting power to or removing the Right-of-Way Installation as promptly as reasonably possible. The Township shall not be responsible for any damage to equipment or expenses incurred as a result of an interruption of power due to a public welfare emergency or safety emergency.
- c) Abandonment of Facilities.
 - i. The Applicant is required to notify the Township of abandonment of any Right-of-Way Installations at the time the decision to abandon is made; however, in no case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the Township shall direct the Applicant to remove all or any portion of the Right-of-Way Installation if the Township determines that such removal will be in the best interest of the public safety and public welfare. If the Applicant fails to remove the abandoned facility within sixty (60) days after such notice, the Township may undertake to do so and recover the actual and reasonable expenses of doing so from the Applicant, its successors and/or assigns.
 - ii. Any Right-of-Way Installations not used for its intended and approved purpose for a period of one (1) year shall be considered “abandoned” and the Township Engineer, within sixty (60) days thereof, may direct the owner of the facility to remove all or any portion of the facility and complete such additional remedial measures as may be necessary for the integrity of the Right-of-Way or the public health, safety, or welfare. If the owner fails to take such actions within ninety (90) calendar days after the owner has been directed to do so, the Township may remove the facility, complete all necessary remedial measures, and charge the owner for removal, storage, disposition, and Right-of-Way remediation costs. The owner must pay any such charges within thirty (30) calendar days of the date they are billed by the Township. Alternatively, the Township Engineer may require that an abandoned facility or components of an abandoned facility remain in place if

removal would cause damage to public property or if the facility or components can be used by the Township or serve a public purpose.

§ 435-10 Miscellaneous Provisions.

- a) Any approval granted pursuant to this Chapter does not relieve the Applicant from receiving consent of the owner of the land above which an Applicant's facility may be located or as required under State Law.
- b) The Township's consent to the use of County Roads, as required pursuant to N.J.S.A. 27:16-6, shall be subject to the standards and application process set forth in this Chapter.
- c) State of Emergency.
 - i. Moratorium on Township Review of Applications During State of Emergency. There shall be a moratorium on the Township's review of Applications when a "state of emergency" is declared by the Federal Government, State, or Township pursuant to federal, State, or local law, and such declaration directly or indirectly relates to, impacts, concerns, or affects the Township's ability to review Applications, as determined by the Township.
 - ii. Termination of the Moratorium. The moratorium on the Township's review of Applications during a "state of emergency" shall terminate upon the issuance of a proclamation, by the party declaring such "state of emergency," stating that the "state of emergency" has been lifted. Notwithstanding the foregoing, the Township may, in its sole discretion, dispense or ease its moratorium during a "state of emergency," but only to the extent that it is reasonably able to process Applications during the "state of emergency."
- d) Notice.
 - i. Permittees shall develop, operate, maintain and update a Website providing information about any New Infrastructure Installation in accordance with the requirements of a Right-of-Way Use Agreement. The Website shall identify the locations of the New Infrastructure Installations, the names and contact information of the owner and lessee(s) of the New Infrastructure Installations, the schedule for installation, hours of construction, impact on parking and pedestrian traffic, and the potential health and safety impact of the New Infrastructure Installations. The Website shall be approved by the Township, which approval shall not be unreasonably withheld, conditioned, or delayed.
 - ii. Permittees shall provide, at their sole cost and expense, via regular mail at least seven (7) days prior to installation of any New Infrastructure Installation, written notification of any New Infrastructure Installation to all residents located within two hundred feet of each New Infrastructure Installation. The notice shall be approved by the Township, which approval shall not be unreasonably withheld, conditioned, or delayed, and shall include information about the New Infrastructure Installation, including but not limited to, the location of any New Infrastructure Installation, the schedule for installation, the impact on parking and pedestrian traffic, Website information and any additional information in accordance with the requirements of a Right-of-Way Use Agreement.

§ 435-11 Violations and Penalties.

Any person who violates any of the provisions of this article shall, upon conviction thereof, be subject to the penalties set forth in Chapter 1, Article II, General Penalty, of the Township Code.

Section 3. In the event any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall take effect upon final adoption and publication in accordance with law.