

TOWNSHIP OF VERONA

ORDINANCE 2022-22

**AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF THE CODE
OF THE TOWNSHIP OF VERONA WITH THE ADDITION OF A NEW
SECTION TITLED CHAPTER 150 ZONING ARTICLE XXIV WIRELESS
TELECOMMUNICATIONS FACILITIES**

WHEREAS, the Township desires to establish reasonable regulations concerning the placement, installation and alteration of wireless telecommunications facilities within the Township, consistent with local, state and federal laws through the implementation of a siting and approval process and planning procedure.

WHEREAS, the Township desires to establish regulations for the siting, installation, alteration and maintenance of Wireless Telecommunications Facilities, as the term is herein defined; and

WHEREAS, the Township desires that these regulations will encourage the location of wireless telecommunications facilities in appropriate locations in order to minimize the total number of wireless telecommunications facilities throughout the Township and encourage collocation on approved telecommunications supporting structures and that the construction of new structures and antennas will be sited so as to minimize the adverse visual impact, and will utilize careful design, landscaping and screening techniques; and

WHEREAS, on February 8, 1996, the United States adopted the Federal Telecommunications Act ("TCA") which, among other things, preserves a local government's authority over the "placement construction and modification of personal wireless service facilities" (47 U.S.C. §332(c)(7)(A)), while making it unlawful for a local government to prohibit or have the effect of prohibiting the provisions of personal wireless service (47 U.S.C. 332(c)(7)(B)(i)(II)), and provides that local government "shall not unreasonably discriminate among providers of functionally equivalent services" (47 U.S.C. §332(c)(7)(B)(i)(I)); and

WHEREAS, on November 18, 2009, the FCC adopted a declaratory ruling at Docket WT Docket No. 08-165 titled "Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance" in regard to the provisions of the TCA which require the timely siting, by establishing 90 and 150 day shot clock timeframe provisions for wireless siting applications; and

WHEREAS, on February 22, 2012, the United States adopted the Middle Class Tax Relief and Job Creation Act" ("TRA") which, among other things, contains provisions designed to improve and expedite wireless siting applications by specifying that eligible facilities requests which do not substantially increase the size of an existing tower or base station must be approved by local governments, with this subset of telecommunications provisions becoming subsequently known as the Spectrum Act; and

WHEREAS, in 2013, the State of New Jersey adopted the New Jersey Collocation Law, codified in N.J.S.A. 40:55D-46.2, which specified, among other things, that site plan review may not be required if a proposed modification does not result in an area greater than 2,500 square feet for a wireless communications compound area, it being the understanding of the Township that in the event of any conflict between the New Jersey Collocation Law and any federal law or regulation, such as the TCA and the Spectrum Act, that the federal laws and regulations shall control; and

WHEREAS, on October 17, 2014, the FCC adopted a Report and Order (the "Infrastructure Order") at WT Docket No. 13-238 titled "Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies", in particular, by clarifying the provisions of the Spectrum Act by describing the types of modifications to wireless facilities which constitute an Eligible Facilities Request, as the term is used in the Spectrum Act, including that a modification may not increase the height of a facility by more than 10% of its existing height; and

WHEREAS, on June 9, 2020, the FCC adopted a Declaratory Ruling and Notice of Proposed Rulemaking at WT Docket No. 19-250 titled "Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012" in order to further clarify the provisions of the Spectrum Act in regards to what type of modification constitutes an Eligible Facilities Request, including specifying which modifications do not defeat the originally intended concealment elements of an existing facility, when the FCC mandated 90 and 150 day shot clocks commence and permitted height increases for towers outside the public right-of-way; and

WHEREAS, on October 27, 2020, the FCC adopted a Report and Order at WT Docket No. 19-250 titled "Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012" in order to further clarify the provisions of the Spectrum Act by specifying the extent to which an Eligible Facilities Request to modify an existing wireless may expand said facility in size and dimensions, including that an existing facility may be expanded by up to 30 feet in any one direction.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Verona that the Code of the Township of Verona be amended as follows:

The Code is hereby amended, supplemented and revised with the addition of Chapter 150 Zoning Article XXIV Wireless Telecommunications Facilities, and which shall read, in its entirety, as follows:

Heading: ARTICLE XXIV WIRELESS TELECOMMUNICATIONS FACILITIES

Sections:

1. 150-24.1 Purpose
2. 150-24.2 Definitions
3. 150-24.3 Non-Applicability to Amateur Radio Stations and Receive Only Antennas
4. 150-24.4 Eligible Facilities Request (No Substantial Change)
5. 150-24.5 Eligible Facilities Request (With Substantial Change)
6. 150-24.6 New Wireless Telecommunications Facilities and Towers
7. 150-24.7 Action on Applications for Wireless Telecommunications Facilities
8. 150-24.8 Eligible Facilities Request Defined
9. 150-24.9 Fees
10. 150-24.10 Location Preference
11. 150-24.11 Development Standards
12. 150-24.12 Site Design Standards
13. 150-24.13 Maintenance of Wireless Telecommunications Facilities
14. 150-24.14 Preexisting Sites and Municipal Agreements
15. 150-24.15 Violation of this Section
16. 150-24.16 Governance of Deployments in the Public Right-of-Way
17. 150-24.17 Removal of Abandoned Wireless Telecommunications Facilities
18. 150-24.18 Waiver
19. 150-24.19 Wireless Consultant Contact Information
20. 150-24.20 Effective Date

150-24.1 Purpose

The purpose of these regulations for the siting, installation, alteration and maintenance of Wireless Telecommunications Facilities, as the term is herein defined, is to:

- A. Protect residential areas and land uses from potential adverse impacts of wireless telecommunications facilities;
- B. Encourage the location of wireless telecommunications facilities in appropriate locations;
- C. Minimize the total number of wireless telecommunications facilities throughout the Township of Verona;
- D. Strongly encourage the collocation on approved wireless telecommunications facilities as a primary option rather than construction of new or additional single-use towers;

- E. Encourage users of antenna structures and antennas to locate them, to the extent possible, in areas where the adverse impact on the residential community is minimal, particularly to avoid adverse visual impacts upon residential dwellings;
- F. Encourage users of antenna structures and antennas to locate and configure them in a way that minimizes the adverse visual impact of the antenna structures and antennas through careful design, siting, landscape screening and innovative camouflaging techniques;
- G. Enhance the ability of the providers of telecommunications services and emergency services to provide such services to the community quickly, effectively and efficiently; and
- H. Avoid potential damage to adjacent properties from structure failure through engineering and careful siting of antenna structures.
- I. Ensure compliance with Federal Communications Commission regulations concerning Eligible Facilities Requests to modify Eligible Support Structures.
- J. Ensure compliance with applicable environmental laws and regulations.

150-24.2 Definitions

For the purposes of this Section, the following terms shall have the meaning indicated below:

- A. Base Station, Existing. Any lawfully existing structure other than a tower that, at the time of review or consideration, already supports or houses lawfully existing FCC-licensed or FCC-authorized wireless transmission equipment, even if such structure was not initially built for the sole or primary purpose of supporting or housing wireless transmission equipment.
- B. Base Station, Proposed. Any proposed or lawfully existing structure other than a tower that is being proposed to be used to support or house FCC-licensed or FCC-authorized wireless transmission equipment and which does not, at the time of such proposal, already support or house wireless transmission equipment.
- C. Eligible Facilities Request. For purposes of clarity, the definition of an Eligible Facilities Request is included in subsection 150-24.8 of this Section.
- D. Eligible Support Structure: A tower or base station, as the terms are defined in 47 C.F.R. 1.6100.
- E. Equipment Compound. An area surrounding or adjacent to the base of a wireless telecommunications tower, or surrounding, adjacent to, within or upon a wireless telecommunications base station, in which wireless transmission equipment is located.
- F. Wireless Telecommunications Facility. The tower or base station and all wireless transmission equipment used in connection with any FCC-licensed or FCC-authorized wireless transmission.
- G. Wireless Telecommunications Tower. Any structure built for the sole or primary purpose of supporting FCC-licensed or FCC-authorized wireless transmission equipment.
- H. Wireless Transmission Equipment. Any antennas, including panel or multimodal antennas, "small cell" systems (such as exterior or interior "DAS" distributed antenna systems), or "dish" microwave antennas, that are used in connection with any FCC-licensed or FCC-authorized wireless transmission, and all other equipment associated with and necessary to their operation, including wires, cables, cabinets, and backup power equipment.

150-24.3 Non-Applicability to Amateur Radio Stations and Receive Only Antennas.

All new Wireless Telecommunications Facilities, including towers, antennas, Distributed Antenna Systems (DAS) (also referred to as a microcell, booster or repeater antenna system) on private property and publicly owned lands, but not in the Township right-of-way, shall be subject to the regulations of this Section, except as otherwise provided herein.

- A. The provisions of this Section shall not govern any antenna that is owned and operated by a Federally licensed amateur radio station operator or is used exclusively as a receive-only antenna in accordance with Federal Communications Commission regulations.
- B. The provisions of this Section shall not govern over the air reception devices (OTARDs) including dish antennas which are less than 39.37 inches in diameter, and television reception antennas, pursuant to section 207 of the TCA and 47 C.F.R. 1.4000.

150-24.4 Eligible Facilities Request (No Substantial Change)

An Eligible Facilities Request that does not substantially change the dimensions of an existing Wireless Telecommunications Facility shall comply with the following:

- A. Reviewing authority. The Township Zoning Officer is the reviewing authority for eligible facilities requests involving no substantial change. The Township Telecommunications Consultant will assist the Township Zoning Officer in all aspects of the implementation of this Section.
- B. Fee. The application fee for an eligible facilities request involving no substantial change is specified in the section of this Section entitled Fees. The fee must be paid to the Zoning Officer prior to the issuance of the applicable Zoning Permit.
- C. Application. An application for an Eligible Facilities Request involving no substantial change must include a completed zoning permit application, a plan drawn by an engineer or architect depicting the existing tower or base station and all proposed facilities and modifications, and other documentation as necessary to demonstrate that the request qualifies as an "Eligible Facilities Request" and involves "no substantial change" as defined in this Section.
- D. Filing. Applications for Eligible Facilities Requests involving no substantial change must be filed with the Zoning Officer in paper format via mail, overnight delivery, or hand delivery, and also in electronic (.pdf or .doc) format via e-mail, and copied simultaneously to the Planning Board in both formats.
- E. Prior Municipal Approvals. Applications for eligible facilities requests involving no substantial change must confirm, to the Zoning Officer's satisfaction, that the existing tower or base station, and all existing wireless telecommunication facilities located thereon, are lawfully in existence, and have been previously granted all necessary municipal land use and development approvals.
- F. Owners' Consent. Applications for eligible facilities requests involving no substantial change must confirm that the owner of the subject property, whether or not within a public right-of-way, and the owner of the subject tower or base station have given prior written consent to the proposed facilities and modifications.
- G. Federal Laws. When reviewing an Eligible Facilities Request involving no substantial change, the Zoning Officer, and any other Township personnel designated to administer and review said request, shall apply the definition contained in 47 U.S.C. 1455, as interpreted by FCC and defined herein. The Zoning Officer shall, when appropriate, rely on the Telecommunications Consultant in the application and interpretation of the foregoing.
- H. Request for Additional Information. If, based on his or her review of the application in consultation with the Planning Board and Telecommunications Consultant, as needed, the Zoning Officer concludes that additional information is needed to determine whether the application can be approved, the Zoning Officer may request such additional information from the applicant. However, Applicant may refuse to provide such information if such information is not necessary to determine whether or not the proposed modification constitutes an Eligible Facilities Request as the term is herein defined.
- I. Interim Denial Pending Further Review. If the Zoning Officer is unable to reach a decision, per Subsection J below, within 10 business days following the date the application was initially received by the Zoning Officer, the Zoning Officer shall, within the ten-business-day period, issue a written notice of denial specifying that "the application is denied for purposes of *N.J.S.A. 40:55D-18* pending further review and final decision pursuant to the applicable section of this Section."
- J. Decision.
 - a. Approval. If, based on his or her review of the application, and the advice and recommendations received from the Telecommunications Consultant, as applicable, the Zoning Officer concludes that the application proposes an Eligible Facilities Request, the Zoning Officer shall approve the application.
 - b. Disapproval. If, based on his or her review of the application, and the advice of the Planning Board and the Telecommunications Consultant, the Zoning Officer concludes that the application does not propose an Eligible Facilities Request, and involves a substantial change to the existing Eligible Support Structure or Wireless Telecommunications Facility, then the Zoning Officer must deny the application and refer the applicant to the applicable provisions of this Section pertaining to

modifications to existing Eligible Support Structures that are not an Eligible Facilities Request and which involve a substantial change to the existing facility.

- K. **Deadline for Final Decision.** The Zoning Officer shall issue a written final decision on the application no less than 60 days following the date the application was initially received by the Zoning Officer. The decision may be issued via mail, e-mail, overnight delivery, or hand-delivery. The deadline for decision may be tolled or waived only upon the applicant's written consent; and once given, such consent may be withdrawn by the applicant at any time upon written notice to the Zoning Officer, provided that any such withdrawal, if given less than 10 days prior to the deadline expiration date, must allow the Zoning Officer at least 10 days to decide the application following the Zoning Officer's receipt of the consent withdrawal.
- L. **Deemed Approved.** Failure to decide an application within the 60 day decision deadline or any extension thereof will constitute an automatic approval of the application as filed.
- M. **Form of final decision.** The Zoning Officer shall memorialize his or her final decision by written approval or denial of the zoning permit application. The approval or denial must include a list of the plans and documents that comprised the application, with references to the dates, titles, and other descriptive features of those plans and documents.

150-24.5 Eligible Support Structure Modification Request (With Substantial Change). A request to modify a Wireless Telecommunications Facility that substantially alters the existing dimensions shall comply with the following:

- A. **Reviewing authority.** The Township Planning Board is the reviewing authority for modifications to Eligible Support Structures that involve substantial change.
- B. **Fees and review escrow deposits.** Applicants for modifications to Eligible Support Structures that involve substantial change must pay fees and review escrow deposits applicable for site plan review or waiver and all requested variances (and subdivision, if applicable), as well as the application fee and initial review escrow deposit specified for "Eligible Support Structure Modification with Substantial Change." All fees and review escrow deposits must be paid to the Planning Board Secretary when the application is filed.
- C. **Application.** An application for a modification to an Eligible Support Structure involving substantial change must include all completed application forms for site plan review or waiver and all requested variances and may also include any other documentation reasonably necessary for the Planning Board to render a decision.
- D. **Filing.** Applications for modification to an Eligible Support Structure involving substantial change must be filed with the Planning Board according to the Planning Board's requirements for all development applications involving site plan review or waiver and variances.
- E. **Federal laws.** When reviewing a modification to an Eligible Support Structure involving substantial change, the Planning Board Planner will apply as appropriate the applicable provisions of 47 U.S.C. § 332(c)(7) of the Communications Act of 1996; 47 U.S.C. § 1455 of the Spectrum Act; Federal Communications Commission Declaratory Ruling under WT Docket No. 08-165, adopted November 18, 2009; Federal Communications Commission Report and Order under WT Docket Nos. 13-238 and 13-32, and WC Docket No. 11-59, adopted October 17, 2014; and any subsequent applicable statutory or regulatory enactments; agency rulings or reports; and court opinions.
- F. **Compliance Review.** The Telecommunications Consultant will provide a compliance review of the application pursuant to Section 150-24.9 herein.
- G. **Development Standards.** When reviewing an application, the Planning Board shall consider whether said application is in compliance with the applicable section 150-24.11 Development Standards and section 150-24.12 Site Design Standards, and shall make reasonable compliance with same a condition of approval.
- H. **Completeness review and deadline.** Completeness review of applications under this subsection will be conducted by the Planning Board Attorney in consultation with the Planning Board Engineer, the Planning Board Secretary and the Telecommunications Consultant, as required. The deadline for completeness review, which is based on federal laws and regulations as opposed to the New Jersey Municipal Land Use Law, is 30 days. If the Planning Board Attorney notifies the applicant of completeness deficiencies in

writing within the thirty-day period, the deadline is tolled, but not reset. Subsequent incompleteness determinations must be issued in writing within 10 days following any subsequent submission. Unless certified complete or incomplete by the Planning Board Attorney within the thirty-day period from filing (or within the ten-day period from a subsequent submission), the application will be deemed complete upon expiration of the thirty-day period from filing (or upon expiration of the ten-day period from subsequent submission). The completeness deadline may be tolled or waived only upon the applicant's written consent; and once given, such consent may be withdrawn at any time by the applicant upon written notice to the Planning Board Attorney.

- I. Scheduling of hearing. Immediately following a certification or "deeming" of completeness of a request to modify an Eligible Support Structure involving substantial change, the Planning Board Attorney shall confer with the applicant's attorney or other authorized representative and the Planning Board Secretary to schedule the application hearing for a mutually acceptable hearing date, provided that the hearing date shall be no later than 90 days following the application's initial filing date. Notice of the hearing shall be mailed and published by the applicant as required by the New Jersey Municipal Land Use Law.
- J. Deadline for decision. The Planning Board must render its decision on a request to modify an Eligible Support Structure involving substantial change no later than 90 days following the application's initial filing date. If the Planning Board believes that the applicant has provided insufficient information for approval of the application, and if the applicant will not provide the additional information and/or extend the 90 day decision deadline as necessary for the Planning Board to continue its review, the Planning Board must deny the application within the ninety-day decision deadline. The deadline for decision may be tolled or waived only upon the applicant's written consent; and once given, such consent may be withdrawn by the applicant at any time upon written notice to the Planning Board Attorney, provided that any such withdrawal, if given less than 35 days prior to the decision deadline, must grant an extension of the decision deadline as necessary to allow the Planning Board to schedule the hearing for the next regular Planning Board meeting, with adequate time for the applicant to mail and publish notice as required by the New Jersey Municipal Land Use Law.
- K. Deemed Approved. Failure to decide the application within the decision deadline or any extension thereof will constitute an automatic approval of the application as filed.
- L. Form of decision. The Planning Board shall memorialize the decision by written resolution as required by, and within the time period specified by *N.J.S.A. 40:55D-10(g)*.

150-24.6 New Wireless Telecommunications Facilities, Including New Towers. New telecommunications facilities and towers shall comply with the following:

- A. Reviewing authority. The Township Planning Board is the reviewing authority for all applications for the construction or installation of Wireless Telecommunications Facilities, as defined herein, that are not Eligible Facilities Requests, and which do not involve an Eligible Support Structure, including any request for modification of an unlawfully existing wireless telecommunications tower or unlawfully existing base station or the wireless telecommunications facilities located thereon, or any request for installation of a wireless telecommunications facility at a "proposed base station," as defined herein, or the installation of a new Wireless Telecommunications Facility at a previously un-utilized location.
- B. Term defined. For purposes of this section, such applications will be referred to generally as "wireless telecommunications facility siting applications."
- C. Fees and review escrow deposits. Applicants for wireless telecommunications facility siting applications must pay fees and review escrow deposits applicable for site plan review or waiver and all requested variances (and subdivision, if applicable), as well as the fee and initial review escrow deposit specified for a "wireless telecommunications facility siting application." All fees and review escrow deposits must be paid to the Planning Board Secretary when the application is filed.
- D. Application. A wireless telecommunications facility siting application must include all completed application forms for site plan review or waiver and all requested variances (and subdivision, if applicable).

- E. Filing. Wireless telecommunications facility siting applications must be filed with the Planning Board according to the Planning Board's requirements for all development applications involving site plan review or waiver and variances (and subdivision, if applicable).
- F. Federal laws. When reviewing a wireless telecommunications facility siting application, the Planning Board Attorney will utilize, as applicable, the relevant provisions of 47 U.S.C. § 332(c)(7) of the Communications Act of 1996; 47 U.S.C. § 1455 of the Spectrum Act; Federal Communications Commission Declaratory Ruling under WT Docket No. 08-165, adopted November 18, 2009; Federal Communications Commission Report and Order under WT Docket Nos. 13-238 and 13-32, and WC Docket No. 11-59, adopted October 17, 2014; and any subsequent applicable statutory or regulatory enactments; agency rulings or reports; and court opinions.
- G. Compliance Review. The Telecommunications Consultant will provide a compliance review of the application pursuant to Section 150-24.9 herein.
- H. Siting and Development Standards. When reviewing a wireless telecommunications facility siting application, the Planning Board shall consider whether said application is in compliance with the applicable section 150-24.10 Location Preferences, section 150-24.11 Development Standards and section 150-24.12 Site Design Standards, and shall make reasonable compliance with same a condition of approval.
- I. Completeness review and deadline. Completeness review of applications for wireless telecommunications facilities siting will be conducted by the Planning Board Attorney in consultation with the Planning Board Engineer, the Planning Board Planner, and the Planning Board Secretary. The deadline for completeness review, which is based on federal laws and regulations rather than the New Jersey Municipal Land Use Law, is 30 days. If the Planning Board Attorney notifies the applicant of completeness deficiencies in writing within the thirty-day period, the deadline is tolled, but not reset. Subsequent incompleteness determinations must be issued in writing within 10 days following any subsequent submission. Unless certified complete or incomplete by the Planning Board Attorney within the thirty-day period from filing (or within the ten-day period from a subsequent submission), the application will be deemed complete upon expiration of the thirty-day period from filing (or upon expiration of the ten-day period from subsequent submission). The completeness deadline may be tolled or waived only upon the applicant's written consent; and once given, such consent may be withdrawn at any time by the applicant upon written notice to the Planning Board Attorney.
- J. Scheduling of hearing. Immediately following a certification or "deeming" of completeness of a wireless telecommunications facility siting application, the Planning Board Attorney shall confer with the applicant's attorney or other authorized representative and the Planning Board Secretary to schedule the application hearing for a mutually acceptable hearing date, provided that the hearing date must be no later than 150 days following the application's initial filing date, or no later than 120 days following a certification or "deeming" of completeness pursuant to *N.J.S.A. 40:55D-10.3*, whichever is earlier. Notice of the hearing must be mailed and published by the applicant as required by the New Jersey Municipal Land Use Law.
- K. Deadline for decision. The Planning Board shall render its decision on a wireless telecommunications facility siting application no later than 150 days following the application's initial filing date, or no later than 120 days following a certification or "deeming" of completeness pursuant to *N.J.S.A. 40:55D-10.3*, whichever is earlier. If the Planning Board believes that the applicant has provided insufficient information for approval of the application, and if the applicant will not provide the additional information and/or extend the 150- or 120-day decision deadline as necessary for the Planning Board to continue its review, the Planning Board must deny the application within the 150- or 120-day decision deadline. The deadline for decision may be tolled or waived only upon the applicant's written consent; and once given, such consent may be withdrawn by the applicant at any time upon written notice to the Planning Board Attorney, provided that any such withdrawal, if given less than 35 days prior to the decision deadline, must grant an extension of the decision deadline as necessary to allow the Planning Board to schedule the hearing for the next regular Planning Board meeting, with adequate time for the applicant to mail and publish notice as required by the New

Jersey Municipal Land Use Law. Failure to decide the application within the decision deadline or any extension thereof will constitute an automatic approval of the application as filed.

- L. Form of decision. The Planning Board shall memorialize the decision by written resolution as required by, and within the time period specified by, *N.J.S.A. 40:55D-10(g)*

150-24.7 Action on Applications for Wireless Telecommunications Facilities:

- A. Review of Applications for Eligible Facilities Requests. The Township shall review the Application in light of its conformity with applicable provisions of this Section, and shall issue a Zoning Permit on nondiscriminatory terms and conditions, subject to the following requirements:
 - a. The Township shall act consistent with the following Shot Clock Dates:
 - i. Review of an Application to collocate a Small Wireless Facility, as the term is defined in the Township Code, using an existing structure: 60 days.
 - ii. Review of an Application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
 - iii. Review of an Application to deploy a Small Wireless Facility using a new structure: 90 days.
 - iv. Review of an Application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.
- B. Commencement of Shot Clock. The Shot Clock timeframes referenced above begin upon submission by the Applicant of required documentation for the first procedural step in the approval process, or when Applicant submits sufficient documentation to demonstrate compliance with section 6409(a) of the Spectrum Act, whichever comes first.
 - a. For an Eligible Facilities Request with no substantial change, the Shot Clock commences upon submission of all documentation required for a Zoning Permit application.
 - b. For request to modify an Eligible Support Structure that involves substantial change, the Shot Clock commences upon submission of all documentation required for Site Plan Approval, and any variances that may be required.
 - c. For an application to install new Wireless Telecommunications Facilities that is not an Eligible Facilities request or a modification of an Eligible Support Structure, the Shot Clock commences upon submission of the required Site Plan and variance documentation required by the Planning Board, and which may vary based upon the zoning district in which the facility is proposed.
 - d. The Shot Clock commences for all 3 instances upon application submission and not upon a determination of application completeness by the Township
- C. Tolling period: Unless a written agreement between the Applicant and the Township provides otherwise, the tolling period for an Application (if any) is as set forth in paragraphs (a) through (c) of this section:
 - a. For an initial application to deploy Small Wireless Facilities, if the Township notifies the Applicant on or before the 10th day after submission that the Application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the Applicant submits all the documents and information identified by the Township to render the Application complete.
 - b. For all other initial Applications, the tolling period shall be the number of days from--
 - i. The day after the date when the Township notifies the Applicant in writing that the Application is materially incomplete and clearly and specifically identifies the missing documents or information that the Applicant must submit to render the Application complete and the specific rule or regulation creating this obligation; until
 - ii. The date when the Applicant submits all the documents and information identified by the siting authority to render the Application complete;

- iii. But only if the notice pursuant to the applicable section of this Section is effectuated on or before the 30th day after the date when the application was submitted; or
- c. For resubmitted Applications following a notice of deficiency, the tolling period shall be the number of days from
 - i. The day after the date when the Township notifies the Applicant in writing that the Applicant's supplemental submission was not sufficient to render the Application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Township's original request under the applicable section of this Section; until
 - ii. The date when the applicant submits all the documents and information identified by the Township to render the Application complete;
 - iii. But only if the notice pursuant to the applicable section of this Section is effectuated on or before the 10th day after the date when the Applicant makes a supplemental submission in response to the Township's request.

150-24.8 Eligible Facilities Request. The term Eligible Facilities Request shall have the following definition:

- A. A request for a modification, as set forth in this Section 150-24.8, of a lawfully existing wireless telecommunications tower or lawfully existing base station that does not substantially change the physical dimensions of such tower or base station as set forth in Subsection D herein, if approved by the Township Zoning Officer pursuant to the procedures set forth herein.
- B. Any eligible facilities request for modification of an unlawfully existing wireless telecommunications tower or an unlawfully existing base station, or for modification of a lawfully existing wireless telecommunications tower or lawfully existing base station that does substantially change the physical dimensions of such tower or base station as set forth in this section 150-24.8 herein, is prohibited. See sections 150-24.5 and 150-24.6 herein for procedures applicable to applications for wireless telecommunications facilities which are not Eligible Facilities Requests.
- C. An "eligible facilities request" is any request does not involve a substantial change to an Eligible Support Structure and involves the following:
 - a. Co-location of new wireless transmission equipment
 - b. Removal of wireless transmission equipment; or
 - c. Replacement of wireless transmission equipment.
- D. A "substantial change" to the physical dimensions of an existing tower or base station is any change meeting the following criteria as measured against the dimensions of the tower or base station as of the date of its initial construction or as of February 21, 2012, whichever is later.
 - a. Increase in height: An increase in the height of an existing tower or an existing base station constitutes a substantial change:
 - i. For towers, if the increase in height is more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, with the 20 foot separation between the proposed antenna array and nearest existing antenna to mean the distance from the top of the highest existing antenna on the tower to the bottom of the proposed new antenna to be deployed above it; and
 - ii. For base stations, if the increase in height is more than 10% of the height of the Eligible Support Structure or 10 feet, whichever is greater
 - b. Increase in width: An increase in the width of an existing tower or an existing base station constitutes a substantial change:
 - i. If the increase would extend or protrude from the edge of the tower more than 20 feet, or more than the width of the tower as measured at the level of the increase, whichever is greater; and
 - ii. If the increase would extend or protrude from the edge of an existing base station by more than 6 feet

- c. Increase in equipment cabinets: The addition of equipment cabinets constitutes a substantial change if it involves one or more of the following:
 - i. Installation of ground cabinets that are more than 10% larger than existing cabinets at the facility
 - ii. Installation of more than the standard number of new equipment cabinets for the technology involved, or more than four cabinets, whichever is less
 - iii. Each separate application request constitutes a separate determination of the number of cabinets and the expansion of size beyond the existing facility, and is not factored as part of a cumulative total which applies to all applications for development.
- d. Excavation or deployment outside of current site: Excavation or deployment of equipment outside the current site of an existing tower or existing base station constitutes a substantial change when required for a proposed co-location, if such excavation or deployment of equipment increases the square footage of the equipment compound to an area greater than 2,500 square feet, pursuant to the standards established in the New Jersey Collocation Law, with 'site' referring to, for towers, the leased or owned property surrounding the tower and any access or utility easements which serve the site, and to other supporting structures as the area in proximity to the structure and to equipment already deployed on the ground, except that modification of an existing site that entails ground excavation or deployment of transmission equipment up to 30 feet in any direction outside a tower's site constitutes an Eligible Facilities Request that is not a substantial change. With Site referring to the current boundaries of a facility that existed as of the date of the original support structure or a modification to that structure that was last reviewed and approved by the Township, if the approval or modification occurred prior to the Spectrum Act or outside of the Section 6409(a) process.
- e. Defeat of existing concealment elements: If the existing concealment elements of an existing tower or existing base station would be defeated by a proposed co-location, as determined by a reasonable person viewing the structure and its intended concealment design as no longer effective after the collocation, the proposed co-location constitutes a substantial change.
- f. Failure to comply with prior conditions: A substantial change occurs if the proposed co-location fails to comply with conditions associated with the prior approval of the existing tower or existing base station, unless such noncompliance is due to an increase in height, an increase in width, an addition of cabinets, or a new excavation or deployment of equipment that does not exceed the corresponding "substantial change" thresholds set forth above.

150-24.9 Fees: The application fees shall be as follows:

- A. Eligible Facilities Request with No Substantial Change: \$300.00
- B. Modification to an Eligible Support Structure that Involves a Substantial Change: Shall be pursuant to the Township land development fee schedules for Minor Site Plan Review and Conditional Use Approval before the Zoning Board. With the added provision that any such development review by the Planning Board or Zoning Board shall be accompanied by a compliance review by the Township Telecommunications Consultant at a rate of \$350/hour, not to exceed the reasonable amount of time necessary to review an application commensurate with its complexity and unique characteristics.
- C. New Wireless Telecommunications Facilities: Shall be pursuant to the Township land development fee schedules for Major Site Plan Review and Conditional Use Approval. With the added provision that any such development review by the Planning Board or Zoning Board shall be accompanied by a compliance review by the Township Telecommunications Consultant at a rate of \$350/hour, not to exceed the reasonable amount of time necessary to review an application commensurate with its complexity and unique characteristics.
- D. Telecommunications Consultant Review applicable to all applications, including Eligible Facilities Requests with No Substantial Change, to ensure compliance with the Following:
 - a. The provisions of this section

- b. Provision of a determination to the Zoning Officer as to whether an application constitutes an Eligible Facilities Request
- c. Additional applicable land use regulations of the Township
- d. Applicable State and Federal laws and regulations
- e. Applicable federal laws and regulations
- f. Fee: \$350/hour, not to exceed the reasonable amount of time needed to review and make a determination based on the complexity of each specific application.

150-24.10 Location Preference. If required for the provision of wireless communications service within the Township, new Wireless Telecommunications Facilities shall be permitted as a conditional use requiring site plan approval at the following prioritized locations:

- A. The first priority location shall be lands or structures owned by the Township;
- B. The second priority location shall be co-location on existing Wireless Telecommunications Facility towers (or existing water tanks), provided that the new installation does not increase the height by more than 10%; and
- C. The third priority shall be in commercial, business and industrial districts.
- D. The fourth priority location shall be other locations in the Township as the applicant demonstrates that such locations are essential to provide required service to Township residents.
- E. Commercial, business and industrial districts shall be prioritized over residential and open space and historical or environmentally sensitive districts.
- F. Locations distant from residential, open space and historically or environmentally sensitive areas shall be favored over locations closer to said areas. Applicant will exhaust options further from such areas before utilizing locations closer to or within said areas.
- G. No district shall outright prohibit Wireless Telecommunications Facilities and in no district are same a permitted use requiring only ministerial construction permits.
- H. In the event of a conflict between district zoning regulations and the regulations of this Section, the regulations of this Section shall control.
- I. As a condition of approval, applicants shall first exhaust options in preferred locations before considering less preferred locations, and shall provide reasonable evidence of same to the planning board, upon request.

150-24.11 Development Standards. To the extent possible while remaining compliant with federal laws and regulations, applications to install Wireless Telecommunications Facilities or modify same shall comply with the following development standards:

- A. Height standards. Where permitted, Wireless Telecommunications Facilities may exceed the maximum building height limitations of the applicable zoning district, provided the height has the least visual impact and is not greater than required to achieve service area requirements and potential co-location, when visually appropriate. Wireless Telecommunications Facilities equipment compounds, shelters and platforms are limited to 12 feet in height.
- B. Setback standards. All Wireless Telecommunications Facilities shall be subject to the minimum yard requirements of the zoning district in which they are located, provided the minimum setback may be increased where necessary to address safety concerns including, but not limited to, the fall radius of a freestanding tower or monopole. If Wireless Telecommunications Facilities are located on the roof of a building, the area of the equipment cabinets, shelters and other equipment and structures shall not occupy more than 25% of the roof area. The location on the roof for same shall be determined on a case-by-case basis and shall be decided based on the rooftop location which causes the least visual effect on the surrounding streetscape and community, while adhering to rooftop structural and safety standards and limitations
- C. Visual Impact. All Wireless Telecommunications Facilities shall be located to minimize visual impacts on the surrounding area. When considering visual impact of roughly equal degree in comparative locations, locations in a higher priority category shall be deemed more acceptable than lower priority sites:
- D. Applicants must demonstrate that the proposed Wireless Telecommunications Facility location provides the least visual impact on residential areas and public ways. All

potential visual impacts must be analyzed to illustrate the selected site provides the best opportunity to minimize the visual impact of the proposed facility.

- E. Wireless Telecommunications Facilities should be located to avoid being visually solitary or prominent when viewed from residential areas and the public way. The facility should be obscured by vegetation, tree cover, topographic features and/or other structures to the maximum extent feasible.
- F. Wireless Telecommunications Facilities shall be placed to ensure that historically significant views, streetscapes and landscapes are protected. The views of and vistas from architecturally and/or significant structures should not be impaired or diminished by the placement of telecommunications facilities.
- G. As a condition of approval, applicants shall include with any submission evidence of compliance with these development standards.

150-24.12.1 Site Design Standards Applicable to All Facilities. The following design standards shall apply to Wireless Telecommunications Facilities installed, altered or modified pursuant to the terms of this Section:

- A. Fencing and other safety devices. Wireless Telecommunications Facilities shall be surrounded by a security feature such as a fence, including ground level equipment appurtenant to a building-mounted antenna installation. All towers shall be designed with anticlimbing devices in order to prevent unauthorized access. All fences, cabinets, and equipment shelters must remain securely locked. Additional safety devices shall be permitted or required, as needed, and as approved by the Township.
- B. Landscaping. Landscaping shall be provided along the perimeter of the security fence to provide a visual screen or buffer for adjoining private properties and the public right-of-way. Required front yard setback areas shall be landscaped. All facilities shall be screened by an evergreen hedge eight to ten feet in height at planting time and/or a solid fence eight feet in height.
- C. Signs. Signs shall not be permitted except for signs displaying owner contact information, warnings, equipment information and safety instructions. Such signs shall not exceed two square feet in area. No commercial advertising shall be permitted on any Wireless Telecommunications Facility.
- D. Color. The color of a facility shall be of a color appropriate to the tower's locational context and to make it as unobtrusive as possible, unless otherwise required by the Federal Aviation Administration (FAA).
- E. Activity and access. All equipment shall be designed and automated to the greatest extent possible in order to reduce the need for on-site maintenance and thereby to minimize the need for vehicular trips to and from the site, access shall be from established site access points whenever possible. Minimal off-street parking shall be permitted as needed and as approved by the Township.
- F. Dish antennas. Dish antennas shall be colored, camouflaged or screened to make them as unobtrusive as possible, and in no case shall the diameter of a dish antenna exceed six feet.
- G. Lighting. No lighting is permitted except as follows:
 - i. Wireless Telecommunications Facilities compounds and shelters enclosing electronic equipment may have security and safety lighting at the entrance, provided that the light is attached to the facility, is focused downward and is on timing devices and/or sensors so that the light is turned off when not needed for safety or security purposes; and
 - ii. No lighting is permitted on a tower or other supporting structure except lighting that specifically is required by the Federal Aviation Administration (FAA), and any such required lighting shall be focused and shielded to the greatest extent possible so as not to project towards adjacent and nearby properties.
 - iii. Indicator lights on cabinets and other equipment shall not be visible from public view.
- H. Monopole. Any proposed new telecommunications tower shall be a monopole unless the applicant can demonstrate that a different type pole is necessary for the co-location of additional antennas on the tower. Such towers may employ camouflage technology. The use of concealment type poles is encouraged.

- I. Noise. No equipment shall be operated so as to produce noise in excess of the limits set by the local ordinances pertaining to noise levels, nuisances and property maintenance, except for in emergency situations requiring the use of a backup generator. The routine cycling and maintenance of any backup generator shall comply with these noise standards.
- J. Radio frequency emissions. The TCA gives the FCC sole jurisdiction of the field of regulation of radio frequency (RF) emission, and Wireless Telecommunications Facilities which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts. Applicants shall provide current FCC information concerning wireless communications facilities and radio frequency emission standards. Applicants shall be required to provide information on the projected power density of the proposed facility and demonstrate how this meets the FCC standards.
- K. Structural Integrity. Wireless Telecommunications Facilities must be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision H Standard, entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," (or equivalent), as it may be updated or amended.
- L. Unused Facilities. Unused cabinets, cabling, antennas, and mounting hardware shall be removed within 6 months of discontinuance of use, unless the user has a bona fide intention to resume use within 12 months of such discontinuance.
- M. Compliance. To the extent possible, as a condition of approval, applicants shall include with any submission evidence of compliance with these site design standards.

150-24.12.2 Site Design Standards Applicable to Facilities Located on Buildings and Rooftops. The following design standards shall apply to Wireless Telecommunications Facilities mounted on buildings and rooftops and which are installed, altered or modified pursuant to the terms of this Section:

- A. Antennas shall be screened or hidden from the public view by the following methods:
 - i. Designed as architectural elements, screened with enclosures, paint, or wrapping.
 - ii. Screening materials shall consist of materials and colors consistent with the surrounding backdrop and/or textured to match the existing structure.
 - iii. Antennas mounted on a rooftop shall be set back from the parapet.
- B. Antennas mounted on architecturally significant structures or architecturally significant details of the building shall be covered with appropriate casings, which are manufactured to match existing architectural features found on the building.
- C. Where feasible, antennas should be placed directly above, below, or be incorporated with vertical design elements of a building to help in camouflaging.
- D. Where feasible, equipment cabinets and vertical cable runs shall be located inside an existing structure. An application to locate cabinets or cable runs outside the structure shall provide an exhibit demonstrating why an indoor location is not feasible. Any outdoor cable run must be located on the side of the building least exposed to public view.
- E. Rooftop cabinets or shelters shall be fully screened or architecturally integrated into the design of the structure to minimize visibility from the ground or occupiable portions of nearby buildings.
- F. All exposed cables, conduits, surface mounted wires, cable trays, and mounting hardware shall be concealed or painted to match the building.
- G. The design of screening enclosures shall be architecturally compatible with the building and shall not substantially increase its visual bulk.

150-24.13 Maintenance of Wireless Telecommunications Facilities. Facilities shall be maintained to assure their continued structural integrity and to ensure they do not create a visual nuisance, including compliance with any applicable provisions of Chapter 390 Property Maintenance of the Township Code. This may include, but is not limited to, trimming required hedges and other vegetation surrounding a facility, as well as a routine visual inspection to ensure the tower or supporting structure has not fallen into any state of disrepair so as to create an unsightly or hazardous condition. This maintenance provision applies especially after a natural disaster, flood, nor'easter, hurricane or other weather event which may negatively impact the facility.

150-24.14 Preexisting and Non-Conforming Sites.

- A. Any Wireless Telecommunications Facilities lawfully existing at the time of the adoption of the provisions of this Section shall be permitted to continue operating and shall not be required to comply with the provisions of this Section except at such time as any such lawfully existing Wireless Telecommunications Facility is intended to be altered, modified, expanded or replaced, at which time said Wireless Telecommunications Facility shall thereafter be required to comply with the provisions of this Section.
- B. Nonconforming Wireless Telecommunications Facilities which are partially damaged or destroyed due to any reason or cause may be repaired and restored to their former use, location and physical dimensions, subject to obtaining a building permit, but without otherwise complying with this Section. If the destruction is greater than partial, then repair or restoration will require compliance with this Section.
- C. The owner of any nonconforming Wireless Telecommunications Facility may repair, rebuild and/or upgrade such facility (but not expand or increase its height or reduce its setbacks), in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this Section.

150-24.15 Violation of this Section. Violation of any of the provisions of this Section shall be a simple citation punishable with a civil penalty of \$500 for each violation which continues more than ten (10) days after written notice of such violation is provided to the Applicant. Each day, after such notice, that a violation occurs or is permitted to exist by the Applicant constitutes a separate offense.

150-24.16 Governance of Deployments in the Public Right-of-Way. This Section is intended to govern the installation, placement, maintenance, modification, upgrade and repair of Wireless Telecommunications Facilities that are within the Township but not located in the Township Right-of-Way. The placement of telecommunications equipment within the Public Right-of-Way shall be governed by other applicable codes and ordinances of the Township, including Chapter 525 Small Wireless Facilities in the Right-of-Way.

150-24.17 Removal of Abandoned Wireless Telecommunications Facilities. Any Wireless Telecommunications Facility that is not operated for a continuous period of 12 months shall be considered abandoned. If there are two or more users of a single facility, then the abandonment shall not apply to the common elements of the facility until all users cease using the facility for a continuous period of 12 months. The owner of such facility shall remove same within 90 days of notice from the Zoning Officer that the facility is abandoned. If such facility is not removed within said 90 days, the municipality may remove such facility at the property owner's expense. If the facility is to be retained, the owner shall establish that the facility will be reused within one year of such discontinuance. If a facility is not reused within one year, a demolition permit shall be obtained and the facility removed. At the discretion of the Zoning Officer, upon good cause shown, the one-year reuse period may be extended for a period not to exceed one additional year.

150-24.18 Waiver. The Township Council, or other Township person, agency or department with the authority to do so, may waive any provision or standard set forth in this Section where it is demonstrated that the strict enforcement of said standard:

- (i) Will prohibit or have the effect of prohibiting any telecommunications service pursuant to 47 U.S.C. 253(a); or
- (ii) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- (iii) Will violate the provisions of section 6409(a) of the 2012 Middle Class Tax Relief and Job Creation Act, also known as the Spectrum Act
- (iv) Will violate any requirement set forth in the FCC Order entitled "Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies", WT Docket No. 13-238 (October 17, 2014); or
- (v) Will violate any requirement set forth in the FCC Order entitled "IMO Implementation of State and Local Governments' Obligations to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012", WT Docket No. 19-250 (June 10, 2020); or

- (vi) Will violate any requirement set forth in the FCC Order entitled “IMO Implementation of State and Local Governments’ Obligations to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012”, WT Docket No. 19-250 (Nov. 3, 2020); or
- (vii) Will violate the provisions of the New Jersey State Collocation Act, set forth in N.J.S.A. 40:55D-46.2
- (viii) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide wireless service to any prospective customer within the Township.

150-24.19 Wireless Consultant Contact Information. The Zoning Officer shall be the initial point of contact for the Township for all matters concerning this Section. The Township, at its sole discretion, may appoint its expert Telecommunications Consultant or Designee as the point of contact for all matters regarding this Section.

150-24.20 Effective Date. This Ordinance shall take effect twenty (20) days after its adoption by the Township Council.



ATTEST:

Jennifer Kiernan
JENNIFER KIERNAN
MUNICIPAL CLERK

NOTICE

I HEREBY CERTIFY THAT THE AFOREMENTIONED ORDINANCE WAS PUBLISHED IN THE STAR LEDGER, A NEWSPAPER PUBLISHED IN THE COUNTY OF ESSEX AND CIRCULATED IN THE TOWNSHIP OF VERONA, IN THE ISSUE OF AUGUST 31, 2022 AND SEPTEMBER 16, 2022.

**JENNIFER KIERNAN
MUNICIPAL CLERK**

INTRODUCTION: July 25, 2022
PUBLIC HEARING: September 12, 2022
EFFECTIVE DATE: October 2, 2022