



BOROUGH OF FLORHAM PARK
ORDINANCE #17-12

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE
BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS,
STATE OF NEW JERSEY TO ESTABLISH A REGULATORY
FRAMEWORK FOR THE REVIEW AND CONSIDERATION OF
APPLICATIONS TO INSTALL TELECOMMUNICATIONS FACILITIES
WITHIN THE PUBLIC RIGHTS-OF-WAY

WHEREAS, the Borough Council has received an increasing number of requests from private parties which have been authorized to provide telecommunications services by the Board of Public Utilities and/or the Federal Communications Commission, in which such parties seek approval to install telecommunications facilities within the public right-of-way, by placing antennas on existing utility poles within the public right-of-way, by utilizing underground conduits, or by the installation of new poles within the public right-of-way; and

WHEREAS, the Borough is aware that such requests are part of an increasing trend across New Jersey, as parties seek ways to increase/improve the means to wireless telecommunications coverage, including broadband, voice and data transmission, to existing or potential new customers; and

WHEREAS, one of the ways that parties are seeking to expand these services is to locate antennas within the public right-of-way, either on existing utility poles or by installing new poles; and

WHEREAS, the Borough Council desires to establish a uniform regulatory framework with respect to such requests, so that they are not handled or reviewed on an *ad hoc* basis; and

WHEREAS, the Borough Council has been advised that there are various Federal and State statutes which regulate these activities, including 47 U.S.C. 253, which preserves municipal authority to manage use of the public rights-of-way, provided that no municipal regulation “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service” as well as N.J.S.A. 48:3-19 which provides that “The consent of the municipality shall be obtained for the use by a person of the poles of another person unless each person has a lawful right to maintain poles in such street, highway or other public place.”

WHEREAS, N.J.S.A. 54:30A-124(a) prohibits any municipality from imposing any franchise fees, taxes or other levies against such companies, but does permit municipalities to charge a “reasonable fees for actual services made by any municipal” government or agency; and

WHEREAS, there does not appear be any uniformity among municipalities that have granted such approvals with respect to the “reasonable fees for actual services made,” and the Borough Council hereby establishes two thousand five hundred dollars (\$2,500.00) as a presumptively appropriate fee to be paid by such companies along with an escrow deposit for construction and inspection fees of one thousand dollars (\$1,000.00) which would apply in reviewing applications only within the Right of Way; and

WHEREAS, such requests are not entitled to any automatic or blanket approvals and the Borough is permitted by law to reasonably review each request to ensure that it complies with applicable State, Federal, County and Municipal Law; and

WHEREAS, the Borough acknowledges that applications for cellular (wireless) telecommunications antennas located on private property and public property not within a public

right-of-way are subject to the requirements of Chapter 227, Telecommunications Antennas, Cellular (Wireless), Chapter 250, Zoning and Chapter 212, Subdivisions and Site Plan Review; and

WHEREAS, the Borough Council recognizes that there is a distinction between requests to place antennas on an existing utility pole, in which the proposed installation is limited solely to attachment to an existing element of infrastructure versus a request to install a new pole, which implicates several municipal concerns including the need to apply for the requisite construction and/or electric permits from the Construction Department.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Florham Park, County of Morris, State of New Jersey, as follows:

SECTION 1. The Code of the Borough of Florham Park is hereby amended to include a new chapter to regulate the subject of this Ordinance to be entitled: “Telecommunications Facilities in the Public Right of Way” which chapter shall read as follows:

A. Definitions.

“Antenna” and “Cellular (Wireless) Telecommunications Antenna” shall be as defined in Chapter 227, Telecommunications Antennas Cellular (Wireless).

“Existing Pole” shall mean a Utility Pole that has been installed in the right-of-way prior to the filing of an application hereunder for the installation of Telecommunications Facilities, or installed by a utility company pursuant to consent previously granted by the Borough.

“New Pole” shall mean a Utility Pole that is not an Existing Pole and that is proposed to be installed solely for the purpose of supporting Telecommunications Facilities. For the avoidance of doubt, a replacement of an Existing Pole that is of substantially similar

height and appearance to the Existing Pole it is replacing shall not be considered a New Pole.

“Party” shall mean an individual, a corporation, a limited liability company, a general or limited partnership, a joint venture, a business trust, or any other form of business entity or association.

“Right-of-Way” shall mean the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or hereafter may exist, that are under the jurisdiction of the Borough of Florham Park or the jurisdiction of the County of Morris for which municipal consent may be required pursuant to N.J.S.A. 27:16-6.

“Telecommunications Facility” shall be defined as antenna(s) and related and ancillary structures and equipment.

“Utility Pole” shall be defined as a vertical structure installed in the right-of-way which structure can support utility wires and cables, streetlights and related ancillary equipment, and is also capable of supporting Telecommunications Facilities.

B. Requirements for new Telecommunications Facilities which propose to use an Existing Pole.

1. Any party that is licensed by the Federal Communications Commission (“FCC”) or authorized by the Board of Public Utilities (“BPU”) to provide telecommunications services in the State of New Jersey shall be entitled to submit to the Borough Construction Official (the “Applicable Official”) an application to install a Telecommunications Facility within the public right-of-way, utilizing an Existing

Pole. Any such application shall be submitted in writing to the Applicable Official, and shall include five (5) copies of each of the following documents:

- a) A narrative explanation of the proposed facility.
 - b) A copy of the party's BPU authority or FCC License authorizing such party to provide telecommunications services.
 - c) A plot plan or detailed sketch depicting the proposed installation, which shall include a key map depicting the site location relative to the nearest cross-street, overhead and elevation views, the pole number (if applicable), the number of antennas, the model of the antennas, the dimensions of the antennas, and any specific information requested by the Applicable Official.
2. If requested by the Applicable Official, the party shall submit a structural report, which shall be signed and sealed by a New Jersey licensed engineer.
 3. The Applicable Official shall submit a copy of the Applicant's petition to the Borough Council, together with all supporting documentation supplied by the Applicant, as well as any information deemed relevant by the Applicable Official.
 4. Upon receipt of the Application package from the Construction Official, the Borough Clerk shall schedule the matter for consideration by the Borough Council during a Council meeting, and shall advise the Applicant of the scheduled Council meeting, and that the Applicant shall be present for such meeting. The Borough Clerk shall provide notice of the hearing as required by law. At such time, the Council shall consider the application.
 5. If the application is in compliance with all requirements of this Ordinance, then the Council shall adopt a resolution to approve the application and a related agreement. The resolution may be adopted at the hearing at which the application was reviewed,

or at the next subsequent Council meeting. A form of agreement to be adopted is attached hereto as "Exhibit A." The agreement may be altered as necessary to suit the appropriate circumstance and shall include as exhibits sketches of the approved installations.

6. The Applicant shall file for, pay any filing fees and obtain any necessary permits required from the Borough pursuant to the applicable Construction Code or other subcode.
7. It shall be the Applicant's responsibility to obtain any and all approvals necessary from the owner and/or operator of the utility pole in question to install antennas and related equipment on the pole. If the utility pole is within the right-of-way under the jurisdiction of the County of Morris, the Applicant shall obtain the approval of the County to install its facilities. Any resolution adopted by the Borough Council in this regard shall indicate that the Borough's authority is limited to authorizing the antennas and related equipment to be located within the public right-of-way, and the Borough has no authority with respect to obtaining approval from the utility pole owner and/or operator to permit any antennas or related equipment to be located on the pole.
8. No antenna or attachment to an existing utility pole shall exceed the height of that pole by more than five feet (5').
9. No antenna shall be attached to an existing utility pole that is located less than one hundred fifty feet (150') away from another utility pole that an antenna is already attached to; provided, however, this shall not prohibit the collocation of two (2) antennas on a single utility pole.

10. There shall be an initial application fee of two thousand five hundred dollars (\$2,500.00) for an application to install up to five Telecommunication Facilities within the public Right of Way. The application fee for subsequent or additional Telecommunications Facilities by the same applicant shall be five hundred dollars (\$500.00) per Telecommunications Facility. Additionally, there shall be an escrow deposit of one thousand dollars (\$1,000.00) for said application(s), which escrow deposit shall be used to reimburse Borough construction and inspection fees and shall be subject to replenishment by the Applicant upon request by the Borough.

C. Requirements for new Telecommunications Facilities which propose a New Pole If the application is for installation of a New Pole with antennas to be attached to the pole, within the Borough right-of-way, the Applicant shall follow the process set forth in Section B herein, provided that the following requirements are satisfied:

1. The New Pole shall be no higher than one hundred fifteen percent (115%) of the average height of the existing poles within a five hundred foot (500) radius.
2. The New Pole shall have no antennas or attachments which extend more than five feet (5') above the pole.
3. The location of the New Pole shall be in a zone where the use is permitted as identified in Chapter 227-2.A; provided however, if the location is in a zone not identified in Chapter 227.2.A, but the New Pole meets the requirements of C(1) and C(2) above, and is in a neighborhood where the New Pole is consistent with the neighboring streetscape, the Applicable Official shall have the discretion to recommend to the Borough Council that the New Pole be approved in accordance with the process set forth in Section B herein, subject to the additional requirement that the Applicant give notice by certified mail to all property owners located within

two hundred feet (200') of the proposed location at least ten (10) days prior to the hearing before the Borough Council.

D. Any application for a New Pole which does not satisfy these requirements shall require approval from the Planning Board or Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70 as applicable.

SECTION 2. Chapter 176 “Public Utility Poles and Facilities” is hereby amended by the addition of a new subsection, 176-1, entitled “Applicability,” which shall read in its entirety as follows: “This references in this Chapter to “telephone or other telecommunications services” shall not be applicable to Wireless Telecommunications Antennas.

SECTION 3. All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

SECTION 4. If any article, section, subsection, paragraph, phrase or sentence of this ordinance is for any reason declared to be invalid, such declaration shall not affect the remainder of the ordinance.

SECTION 5. This ordinance shall take effect upon final publication as provided for by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on May 18, 2017 and adopted at Public Hearing held on June 22, 2017 at 7:00 p.m.in the Municipal Building located at 111 Ridgedale Avenue.

INTRODUCED: May 18, 2017

ADOPTED: June 22, 2017

Mark Taylor, Mayor

ATTEST:

Sheila Williams, Borough Clerk

Certified to be a true and correct copy of an Ordinance adopted by the Governing Body of the Borough of Florham Park on June 22, 2017.

Sheila A. Williams, R.M.C.