

ORDINANCE NO. 2020-12

AN ORDINANCE OF THE BOROUGH OF HARVEY CEDARS AMENDING AND SUPPLEMENTING CHAPTER 23 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF HARVEY CEDARS ENTITLED “WIRELESS COMMUNICATIONS FACILITIES” AS IT PERTAINS TO INSIDE AND OUTSIDE OF THE RIGHT-OF-WAY AND UTILITY POLES

WHEREAS the purpose of this Ordinance is to amend Chapter 23 by repealing it in its entirety and revise the regulations relating to wireless communications facilities, specifically supplementing regulations for communications facilities inside and outside the public right-of-way and the use of utility and small wireless facility poles.

BE IT ORDAINED by the governing body of the Borough of Harvey Cedars, County of Ocean, State of New Jersey, as follows:

Section 1. Chapter 23 of the Revised General Ordinances of the Borough of Harvey Cedars entitled “Wireless Communications Facilities” is hereby repealed in its entirety and replaced with the following:

**CHAPTER XXIII
WIRELESS COMMUNICATIONS FACILITIES**

23-1 PURPOSE. The purpose of this chapter for the siting of wireless communications facilities is as follows.

- A. Protect residential areas and land uses from potential adverse impacts of wireless communications facilities[#] and encourage applicants to locate wireless communications facilities, to the extent practicable and possible, in areas where the adverse impact to the community is minimal.
- B. Encourage and ensure the appropriate location of wireless communications facilities in consideration of the public health, welfare, and safety.
- C. Consistent with federal and state law, minimize the total number of wireless communications facilities in the Borough.
- D. Strongly encourage the collocation and joint use of existing and approved wireless communications facilities as a primary option rather than construction of new tower-based wireless communications facilities.
- E. Encourage applicants to locate wireless communications facilities, to the extent practicable and possible, in areas where the adverse impact to the community is minimal.
- F. Encourage applicants to configure wireless communications facilities in a way that minimizes their adverse visual impact through careful design, siting, landscape screening, and innovative camouflaging and stealth technology.
- G. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.
- H. Avoid potential damage to adjacent properties and the public health, welfare, and safety through proper engineering and careful siting of wireless communications facilities.
- I. Comply with applicable federal and state law on the siting and regulation of wireless communications facilities, while ensuring that proper zoning regulations are implemented to ensure that the public health, welfare, and safety is protected and to minimize the adverse visual, structural health, and safety impacts of such facilities.
- J. In furtherance of the foregoing goals, the Borough shall give due consideration to the Borough Master Plan, Zoning Map, existing land uses, and environmentally sensitive areas in the approving of sites for the location of wireless communications facilities and the regulation of such facilities.

23-2 APPLICABILITY.

- A. All wireless communications facilities shall be subject to these regulations, the applicable building regulations, and the Borough Code, except as otherwise provided or grandfathered herein.
- B. Amateur Radio; Receive-Only Antennas. This chapter shall not govern any tower or the installation of any antenna that is under 70 feet in height which is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.

- C. Preexisting Towers or Antennas. Preexisting towers or antennas shall not be required to meet the requirements of this chapter, other than the requirements regarding building codes and safety standards. This exception shall not apply to any expansion or intensification of a preexisting tower or antenna.
- D. Government Agencies. Communication towers and/or antenna owned, operated, leased, or used by the Borough shall be exempt from the requirements of this chapter.
- E. Satellite Dish Antenna. This chapter shall not govern any parabolic satellite antennas.

23-3 DEFINITIONS. The following words, phrases and terms as used in this chapter are hereby defined for the purpose thereof as follows.

Antenna means any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc), or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities defined below.

Base Station means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation, the following.

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as a backhaul network.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including DAS and small-cell networks).
3. Any structure other than a tower that, at the time the relevant application is filed under this section, supports or houses equipment described in paragraphs (1) and (2) which has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

Backhaul network means the lines that connect a wireless provider's or facility developer's towers and cell sites to one or more cellular telephone switching offices and/or long-distance providers or the public switched telephone network.

Collocation means the act of siting wireless communications facility on an existing structure without the need to construct a new wireless communications support structure and without a substantial increase in the size of an existing structure. The mounting of one or more wireless communications facilities, including antennae, on an existing tower-based wireless communications facility and/or wireless support structure for the purpose of transmitting and/or receiving radio and digital frequency signals for communications purposes. To be confirmed as collocation, an applicant must demonstrate that it qualifies as collocation in accordance with federal and state law, including, but not limited to, N.J.S.A. 40:55D-46.2. The siting of small wireless facilities and DAS on existing utility poles in the ROW shall be considered collocation.

Coverage gap means the need for additional capacity because of inadequate present capacity or service, dead spots, and inability to place a call.

Dead spot means small areas within a service area where the field of strength is lower than the minimum level for reliable service or inadequate capacity exists as determined by expert testimony in accordance with industry standards.

Distributed antenna system or DAS means a network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure. #DAS antenna elevations are generally at or below the clutter level and node installations are compact.

FCC means the Federal Communications Commission.

Monopole means a wireless communications facility or site which consists of a single pole structure, designed and erected on the ground or on top of a structure to support communications antennae and connecting appurtenances.

Non-tower wireless communications facility means all non-tower wireless communications facilities, including, but not limited to, antennae and related equipment.

Preexisting wireless support structures means any tower, antenna, and/or other wireless communications support structure that has a construction permit or land use approval prior to the effective date of this section and including, but not limited to, any tower, antenna, and/or wireless communications support structure on property owned, leased, or otherwise controlled by the Borough.

Public utility means persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or landline telephone service to the general public. The term “public utility,” however, shall not mean, for purposes of this Chapter, wireless communications providers and wireless facility developers.

Right-of-way or ROW means the surface of and space above and below any real property in the Borough in which the Borough, County of Ocean, and/or State of New Jersey has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area, or property under the control of the Borough, County of Ocean, and/or State of New Jersey, and any unrestricted public or utility easements established, dedicated, platted, improved, or devoted for utility purposes, but excluding lands relating to other than streets that are owned by the Borough, County of Ocean, and/or State of New Jersey. The phrase “in the right(s)-of-way” means in, on, over, along, above, and/or under the right(s)-of-way.

Satellite dish means any apparatus with a flat or parabolic surface which is designed for the purpose of receiving television, radio, microwave, satellite, or similar electronic signals.

Small Wireless Facility means a wireless facility mounted on structures 40 feet or less in height and meets both of the following qualifications: (i) each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume; and (ii) all other wireless equipment associated with the small wireless facility, whether ground- or pole-mounted, is cumulatively no more than 28 cubic feet in volume. Small wireless facilities include DAS.

Small Wireless Facility Pole means a pole substantially similar to a utility pole and subject to the same laws and regulations governing utility poles which provides for the siting of small wireless facilities in the ROW.

Stealth technology means camouflaging methods applied to wireless communications towers, antennae, and other related facilities which render them more visually appealing, or blend the proposed facilities into the existing structure or visual backdrop in such a manner as to render them minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae paint to match the existing structure, and facilities constructed to resemble trees, shrubs, flag poles, utility poles, and light poles.

Substantial change means a modification substantially changes the physical dimension of a wireless communications support structure and/or base station if it meets any of the following criteria.

1. Increase in height. An increase in the height of a wireless communications support structure constitutes a substantial change (a) for structures outside public rights-of-way, if the proposed increase in height is more than 20 feet or 10%, whichever is greater. All wireless communications support structures in the ROW, including small wireless facility poles and utility poles, shall be limited to a maximum of 40 feet in height. Any change to the increase in height for any wireless communications support structures in the ROW that increase the height to a total less than the maximum of 40 feet shall not constitute a substantial change.
2. Increase in width. An increase in the width of a tower constitutes a substantial change for towers outside public rights-of-way, if the increase protrudes from the edge of the

- tower more than 20 feet or more than the width of the tower structure at the level of the new appurtenance. All changes to the width of small wireless facilities that comply with the applicable regulations shall be deemed non-substantial.
3. Increase in equipment cabinets. The addition of equipment cabinets constitutes a substantial change if it involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than 4 cabinets, whichever is less.
 4. Excavation or deployment outside current site. Excavation or deployment of equipment outside the current site of the tower or base station constitutes a substantial change when required for a proposed collocation.
 5. Defeat of existing concealment elements. If existing concealment elements of the tower or base station would be defeated by the proposed collocation, the proposed collocation constitutes a substantial change. For example, if the proposed collocation would result in an extension of a camouflaged tree tower which would result in the tower no longer looking like a tree, the proposed collocation would constitute a substantial change of the tree tower.
 6. Failure to comply with prior conditions. A substantial change occurs if the proposed collocation fails to comply with conditions associated with the prior approval of the tower or base station, unless such non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds described above.
 7. The collocation of small wireless facilities on existing utility poles in the ROW and the replacement of existing, approved utility poles pursuant to the applicable law in the ROW shall not be considered a substantial change.
 8. No changes that exceed the scope of the applicable regulations shall be permitted, whether substantial or non-substantial.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar wireless telecommunication purposes, including self-supporting lattice towers or monopole towers. The term shall also include radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, monopoles, and the like. The term includes the structure of the tower along with any support thereto.

Tower-based wireless communications facility means any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers, and monopoles. DAS hub facilities are considered to be tower-based wireless communications facilities.

Utility pole means any telephone pole, public utility pole, electric pole, or any other pole providing for the maintenance of wires for the distribution of electricity, telephone signals, telegraph signals, and/or television signals.

Wireless means transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

Wireless communications equipment means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cabling, and coaxial and fiber optic cable, but excluding wireless communications support structures.

Wireless communications facility means the antennae, nodes, DAS, control boxes, towers, poles, conduits, ducts, pedestals, electronics, base station, small wireless facility, tower, wireless communications support structure, and other equipment used for the purposes of transmitting, receiving, distributing, providing, or accommodating wireless communications services.

Wireless communications support structure means a structure that is designed to support, or is capable of supporting, wireless communications facilities and equipment, including, but not limited to, a tower, water tower, or utility pole.

Wireless communications and communications service means any personal wireless services as defined in the Telecommunications Act of 1996 ("TCA"), which includes FCC licensed commercial wireless telecommunications services, including, but not limited to,

all FCC-licensed blackhaul network and other wireless services, broadcast, cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, paging, and similar services that exist or that may be developed in the future.

23-4 PERMITTED USE, SCOPE, AND RESTRICTIONS.

- A. Wireless communications facilities are a permitted use in the General Business, Limited Commercial and Marine Commercial Districts. Only collocation of small wireless facilities on utility poles in the ROW and the construction of small wireless facility poles for the purpose of siting small wireless facilities in the ROW shall be permitted in residential zones and only 1 such wireless communications facility shall be permitted on each utility pole and small wireless facility pole. No other wireless communications facilities of any type shall be permitted in any residential zones or within 100 feet of a lot in residential use or a residential district boundary.
- B. No wireless communications facilities are permitted inside or on any buildings or accessory buildings in the Borough. Except for the collocation of small wireless facilities on utility poles and siting of small wireless facilities on small wireless facility poles in the ROW as required by Federal and State law, and, as otherwise provided in this chapter, no non-tower based wireless communications facilities shall be permitted in the Borough.
- C. With the exception of Borough-owned and/or constructed lattice towers or guy-lattice towers, no lattice towers or guy-lattice towers shall be permitted in the Borough.
- D. Except as otherwise provided by law for public utilities and the approval and construction of new small wireless facility poles for the purpose of siting small wireless facilities as permitted in this chapter, no new wireless communications support structures, such as towers or monopoles, shall be permitted in the ROW. Only collocation of small wireless facilities, non-substantial changes to existing wireless support structures, utility poles, and small wireless facility poles shall be permitted in the ROW.
- E. Wireless communications facilities located on property owned, leased, or otherwise controlled by the Borough shall be a permitted use in all Zoning Districts, provided that a license or lease authorizing such facilities has been approved by the Borough, and, as a condition of any such license or lease, the Borough may require site plan approval or may exempt the applicant from approval. The decision to extend such license or lease to an applicant shall be vested solely with the Borough, and shall not be governed by this chapter. The Borough, in its absolute and sole discretion, reserves the express right to deny all use of its property for wireless communications facilities. Nothing in this section shall be construed as requiring any applicant to locate on property owned, leased, or otherwise controlled by the Borough. Preexisting wireless communications facilities are exempt from the application of this subsection.
- F. No advertising signs shall be permitted on any wireless communications facilities, wireless communications support structures, wireless communications equipment, or base stations.
- G. All ROW regulations shall apply to all entities and applicants, regardless of whether the ROW is owned and/or controlled by the County or the State.

23-5 COLLOCATION AND PRIORITY POLICY.

- A. The Borough Engineer shall maintain an inventory of existing wireless communications facility locations within or near the Borough.
- B. It is the Borough's policy that the first priority locations for wireless communications facilities within the Borough shall be Borough-owned towers, and then non-Borough owned existing towers and wireless support structures, and all applicants for new wireless communications facilities shall make all reasonable and good faith efforts to collocate the proposed wireless communications facilities and/or secure the location of such facilities on Borough-owned facilities first, non-Borough owned existing towers and wireless support structures second, the collocation of small wireless facilities on existing utility poles third, and the construction of small wireless facility poles fourth.
- C. The Borough's priority policy for small wireless facilities is as follows:
 - 1. Existing utility poles shall be the priority locations for such facilities, followed by replacement of utility poles, and followed by the construction of new small wireless facility poles.

2. First priority for collocation on existing utility poles and construction of new small wireless facility poles shall be first in non-residential zones, second on Long Beach Boulevard in all zones, and third on local residential streets.
- D. An applicant proposing any wireless communications facility at a new location shall demonstrate and document that it made its best business efforts to find a collocation site and that none was available, practicable, economically feasible, and was not a viable option.

23-6 COSTS AND FEES.

- A. Outside the ROW – Application fees, costs, and escrows relating to wireless communications facilities outside the ROW, non-collocation, and substantial changes.
1. Permit and Escrow Fees. The Borough may assess appropriate and reasonable application and permit fees directly related to the actual costs in reviewing and processing the application for approval of wireless communication facilities, as well as inspection, monitoring, and related costs, as set by resolution. The Borough may also impose and require escrow fees for the payment of actual fees and costs, as the Borough deems appropriate by way of resolution.
 2. Retention of Experts and Costs. The Borough and the Land Use Board may use and/or hire any consultants, engineers, attorneys, and/or experts to assist with the review and application for approval of wireless communications facilities, and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this chapter and the Borough Code. The applicant and/or owner of the wireless communication facility shall reimburse the Borough and the Land Use Board for all costs of the consultants, engineers, attorneys, and/or experts in providing expert evaluation and consultation in connection with these activities.
- B. Inside the ROW – Application fees and costs relating to wireless communications facilities inside the ROW, collocation, and non-substantial changes.
1. All applications shall be accompanied by a fee directly related to a reasonable approximation of the Borough’s costs reasonably incurred as a direct result of the application and which the fee shall be set at \$500 for an application including 1 to 5 location sites and \$100 for each additional location site.
 2. In addition to other fees provided herein, every wireless communications facility in the ROW is subject to the Borough’s right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough’s actual ROW management costs, if any, including, but not limited to, the costs of the administration and performance of all review, inspection, supervision, and other ROW management activities by the Borough. The owner of each wireless communications facility shall pay an annual fee to compensate the Borough for the Borough’s costs incurred, if any. The annual ROW management fee for wireless communications facilities shall be determined by Borough and authorized by resolution. Unless otherwise permitted by law, the annual fee shall be set at \$270 for each site in the ROW.

23-7 APPLICATION REQUIREMENTS FOR THE INSTALLATION OF TOWER BASED AND/OR SUBSTANTIAL CHANGES TO WIRELESS COMMUNICATIONS FACILITIES.

- A. Except as otherwise provided in this section, no wireless communications facilities shall be constructed, erected, or substantially changed unless site plan approval and any and all applicable variances are obtained from the Land Use Board.
- B. This section shall not apply to existing utility poles, the replacement of utility poles, and new utility poles in the ROW and the construction of small wireless facility poles in the ROW. The foregoing does not constitute towers or tower-based wireless communications facilities.
- C. The following provisions shall apply to applications for such approval.

1. Applications for site plans along with any required variances shall be subject to the procedures and requirements of the Municipal Land Use Law and the Borough Code, except as modified herein.
 2. In granting site plan approval or a variance, the Land Use Board may impose additional conditions consistent with federal and state law to the extent the Land Use Board concludes such are necessary to minimize any adverse effect of the proposed wireless communications facility on adjoining properties.
 3. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer of the State of New Jersey, if a licensing requirement for that professional exists in New Jersey.
 4. An applicant for site plan approval or a variance shall submit the information required, a nonrefundable application fee, and an escrow deposit as established by resolution. The application fee and escrows shall be paid as required herein.
 5. Any tower shall be designed and constructed so as to accommodate at least 4 antenna arrays of separate wireless communications providers, where such accommodation is technically feasible.
- D. In addition to any and all information required for applications for site plan approval or a variance pursuant to this section and the Borough Code, applicants for approval for the construction or installation of wireless communication facilities shall submit all of the items identified on the application checklist, along with the following information before the application is certified as complete.
1. A completed application and application checklist for proposed wireless communications facilities.
 2. The identity of the owner of the property, structure, and/or building and a copy of the lease (with confidential or proprietary information redacted), proof of ownership and authority, and deed for the property.
 3. A scaled site plan clearly indicating the location, type, and height of the proposed wireless communications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed wireless communications facility and any other structures, topography, parking, and other information as required by this or other Borough ordinances, or as required by the Borough or Board Engineer, to enable comprehensive review of the application.
 4. Survey of the property, including a Letter of Interpretation from the New Jersey Department of Environmental Protection, signed and sealed by a land surveyor licensed in the State of New Jersey, dated no earlier than 12 months prior to the date of the application.
 5. The separation distance between the proposed wireless communications facility and the nearest residential unit and/or residentially zoned property.
 6. The separation distance from other wireless communications facilities described in the inventory of existing sites submitted pursuant to this subsection shall be shown on an updated site plan or map certified by a licensed engineer or licensed land surveyor. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s).
 7. A landscape plan showing specific landscape materials and precise locations of proposed landscaping improvements, including, but not limited to, species type, size, spacing, other landscape features, and existing vegetation to be retained, removed, or replaced, which shall be certified by a licensed engineer or certified landscape architect.
 8. An Environmental Impact Study.
 9. A plan evidencing compliance with the applicable requirements of this section, including, but not limited to, the architecture, stealth technology requirements, aesthetics, color, camouflage, landscaping, and fencing.
 10. A written report of the suitability or non-suitability of the use of existing wireless communications facilities or other structures for services to be provided through the use of the proposed new wireless communications facility.
 11. A written report of the feasible location(s) of future wireless communications facilities that may be erected by the applicant within the Borough based upon existing physical engineering, technological, or geographical limitations in the event the proposed wireless communications facility is erected.

12. A visual study, including photographic or topographic plans, identifying a line of sight analysis detailing the view of the proposed wireless communications facility from various directions and angles from adjacent areas within a 750-foot radius of the proposed wireless communications facility. The analysis shall be utilized to determine buffer requirements.
13. Documentation of the results of the crane test, including a line-of-sight survey and photographic result of the crane test with regard to the potential visual and aesthetic impacts of the proposed tower. Such documentation must establish the zone of visibility of the proposed tower.
14. Photo-simulations of any proposed tower, which shall include at least 1 photo-simulation from at least 4 angles of view of the tower (from the north, east, south and west), taken from ground level at the property line of the proposed site of any tower. Photo-simulations presented to the approving authority shall be in color and a minimum of 8 inches by 11 inches in size.
15. Documentary and expert evidence regarding the need for the wireless communications facility, which information shall identify the existing wireless network layout and existing coverage areas to demonstrate the need for the facility at a particular location within the Borough. The evidence shall include a report of the radio frequency engineering analysis of the search area for the wireless communications facility.
16. A report from a qualified expert certifying that the wireless communications facility complies with the latest structural and wind loading requirements as set forth in the Building Officials and Code Administrators (“BOCA”) International Code, including a description of the number and type of antennas it is designed to accommodate.
17. A statement by the applicant demonstrating whether construction of the wireless communications facility will accommodate collocation of additional antenna for future users. If so, a letter of commitment by the applicant to lease excess space on wireless communications facility to other potential users at prevailing market rates and conditions. The letter of commitment shall be recorded prior to issuance of a building permit. The letter shall commit the tower owner and successors in interest.
18. Elevations of all existing and proposed structures generally depicting all existing and proposed antennas, towers, platforms, finish materials, as well as all other accessory equipment.
19. Inventory of Existing Sites. Each applicant shall provide to the Land Use Board an inventory of its existing wireless communications facilities or sites approved for towers or antennas that are either within the jurisdiction of the Borough or within 3 miles of the proposed site, whichever is more extensive, including specific information about the location, height, and design of each wireless communications facility. The Borough and the Land Use Board may share such information with other applicants applying for administrative approvals or permits under this section or other organizations seeking to locate wireless communications facilities within the jurisdiction of the Borough; provided, however, that the Borough and Land Use Board are not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
20. Identification of the entities providing the backhaul network for the wireless communications facility described in the application and other cellular sites owned or operated by the applicant in the municipality.
21. Detailed and certified engineering plans of the wireless communications facility proposed and any and all related equipment.
22. Fully-executed indemnification and hold harmless agreements prepared by the Borough, which are provided with the application package.
23. Documentation that the existing vegetation, trees, and shrubs located within proximity to the wireless communications facility structure shall be preserved to the maximum extent possible.
24. A soil report to the Borough complying with the standards of Appendix I: Geotechnical Investigations, ANSI/ETA 222-B, as amended, to document and verify the design specifications of the foundation of the tower-based wireless communications facility, and anchors, if used.
25. Documentation of compliance with all of the regulations set forth in with Borough ordinances.

23-8 REVIEW OF TOWER-BASED APPLICATIONS# AND/OR SUBSTANTIAL CHANGES TO WIRELESS COMMUNICATIONS FACILITIES.

Tower-based applications shall be reviewed by the Land Use Board pursuant to the following:

- A. Timeframe for review. The Land Use Board shall render a decision on an application within 150 days of receipt of a complete application.
- B. Incomplete applications. The Land Use Board may toll the 150-day timeframe set by notifying the applicant, within 30 days of receipt of submission of an application, that the application is incomplete. Such notification shall set forth all outstanding information, as well as the applicable Code provision, ordinance, application instruction, or publicly stated procedure requiring the information to be submitted. The 150-day timeframe shall begin again upon receipt of the supplemental submission.
- C. Subsequent incomplete applications. The Land Use Board may thereafter toll the 150-day timeframe by notifying the applicant, within 10 days of receipt of the supplemental submission that the applicant did not provide the information identified in the original notice delineating missing information. Second or subsequent notices of incompleteness may not specify missing documents or information not previously delineated in the original notice of incompleteness.
- D. Failure to act. If the Land Use Board does not approve or deny an application within 150 days of receipt of the application or any applicable tolling periods thereafter, the applicant may notify the Land Use Board in writing that the review period has expired. Upon the Land Use Board's receipt of this notice from the applicant, the application shall be deemed granted.

23-9 APPLICATION REQUIREMENTS FOR NEW CONSTRUCTION AND/OR INSTALLATION OF NEW SMALL WIRELESS FACILITY POLES FOR THE SITING OF SMALL WIRELESS FACILITIES IN THE ROW, THE COLLOCATION OF NON-SMALL WIRELESS FACILITIES, SUBSTANTIAL CHANGES TO SMALL WIRELESS FACILITIES, AND NON-SUBSTANTIAL CHANGES TO NON-SMALL WIRELESS FACILITIES

- A. An application for development to construct and/or install new wireless communications facilities that constitute new construction and/or installation of all wireless communications facilities that include new small wireless facility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities shall not be subject to site plan review, provided the application meets the following requirements.
 - 1. If collocation to or non-substantial change to an existing wireless communications support structure, the existing structure shall have been previously granted all necessary approvals by the appropriate approving authority.
 - 2. If construction and/or installation of a new small wireless facility pole in the ROW for the purpose of siting small wireless facilities in the ROW, the new structure shall obtain all necessary approvals by the appropriate approving authority.
 - 3. The proposed application satisfies the federal and State requirements to meet the standards for collocation.
 - 4. The proposed collocation and/or change complies with the final approval of the wireless communications support structure and all conditions attached thereto and does not create a condition for which variance relief would be required pursuant to N.J.S.A. 40:55D-1, et seq., or any other applicable law, rule, or regulation.
 - 5. Complies with all applicable requirements of the Borough ordinances.
- B. Each application shall be limited to a request to construct and/or install a total of 1 wireless communications facility that constitutes new construction and/or installation of all wireless communications facilities that include new small wireless facility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities.

- C. All applications shall be submitted to the Municipal Clerk on the proscribed application and checklist form(s) and shall include the following information.
1. A completed application and application checklist.
 2. A statement and supporting proofs that the application qualifies as new construction and/or installation of all wireless communications facilities that include new small wireless facility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities.
 3. The identity of the owner of the property, structure, and/or building and proof of approval to use the site and compliance with N.J.S.A. 48:3-18.
 4. Proof of all consents required by federal, State, and local law and regulations, including N.J.S.A. 48:17-8.
 5. Certification that the applicant possesses the legal authority to construct, collocate, and/or change the wireless communications support structure, which may include approvals from the jurisdiction authorizing the initial placement of the wireless communications support structure and transmission equipment.
 6. Fully-executed indemnification and hold harmless agreements.
 7. A scaled location plan clearly indicating the location, type, and height of the proposed wireless communications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed wireless communications facility and any other structures, topography, parking, and other information as required by the Borough Code, or as required by the Borough to enable comprehensive review of the application.
 8. The separation distance from other wireless communications facilities shall be shown on a location plan or map certified by a licensed engineer or licensed land surveyor. The applicant shall also identify the type of construction of the existing wireless communications support structure(s) and the owner/operator of wireless communications support structure(s) within 1 mile.
 9. A description of the type and quantity of equipment to be installed and the number and size of any equipment cabinets to be installed.
 10. A description of any excavation required.
 11. A description of any change in wireless communications support structure height and/or width as a result of the proposed collocation, removal, or replacement.
 12. A plan evidencing the development's compliance with the applicable requirements, including, but not limited to, the architecture, aesthetics, color, and use of stealth technology.
 13. A written report of the suitability or non-suitability of the use of existing wireless communications facilities or other structures for services to be provided through the use of the proposed new wireless communications facility, including certification from a structural engineer that the existing or new utility pole is structurally suitable and safe for new construction and/or installation of all wireless communications facilities that include new utility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities.
 14. A report from a qualified expert certifying that the wireless communications facility complies with the latest structural and wind loading requirements as set forth in the International Building Code, New Jersey State edition, as amended, or the

applicable New Jersey structural and wind requirements, including a description of the number and type of antennae it is designed to accommodate.

15. A statement by the applicant demonstrating whether construction of the wireless communications facility will accommodate collocation of additional antenna for future users. The statement shall commit the wireless communications support structure owner and successors in interest.
16. Elevations of all proposed wireless communications facilities generally depicting all existing and proposed antennae, wireless communications support structures, platforms, finish materials, as well as all other accessory equipment.
17. An inventory of its existing wireless communications facilities or sites approved for wireless communications support structures or antennae within the jurisdiction of the Borough.
18. Documentation of compliance with all of the applicable requirements of the Borough Code.

23-10 REVIEW OF APPLICATIONS FOR NEW CONSTRUCTION AND/OR INSTALLATION OF ALL WIRELESS COMMUNICATIONS FACILITIES THAT INCLUDE NEW UTILITY POLES FOR THE SITING OF SMALL WIRELESS FACILITIES IN THE ROW, THE COLLOCATION OF NON-SMALL WIRELESS FACILITIES, SUBSTANTIAL CHANGES TO SMALL WIRELESS FACILITIES, AND NON-SUBSTANTIAL CHANGES TO NON-SMALL WIRELESS FACILITIES

- A. Initial review. The Board of Commissioners shall review the application and advise the applicant within 30 days as to whether the Borough deems that the application is subject to these or other regulations. If compliance with other subsections are deemed to be required, the applicant shall proceed in accordance with the applicable regulations.
- B. Timeframe for review. The Board of Commissioners shall review and approve or deny the application within 90 days of receipt. This 90-day period may be extended by mutual agreement of the Borough and the applicant.
- C. Incomplete applications. The Board of Commissioners may toll the 90-day timeframe by notifying the applicant, within 30 days of receipt of submission of an application, that the application is incomplete. Such notification shall set forth all outstanding information, as well as the applicable Code provision, ordinance, application instruction, or publicly stated procedure requiring the information to be submitted. The 90-day timeframe shall begin again upon receipt of the supplemental submission.
- D. Subsequent incomplete applications. The Board of Commissioners may thereafter toll the 90-day timeframe by notifying the applicant, within 10 days of receipt of the supplemental submission, that the applicant did not provide the information identified in the original notice delineating missing information. Second or subsequent notices of incompleteness may not specify missing documents or information not previously delineated in the original notice of incompleteness.
- E. Complete applications. The Board of Commissioners shall, within the 90-day timeframe, approve all complete applications for the construction and/or installation of all wireless communications facilities that constitute new construction and/or installation of all wireless communications facilities that include new utility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities and that do not otherwise violate applicable health, safety, and other requirements set forth in this section. If the Board of Commissioners determines that an application fails to comply with this section, it shall notify the applicant of same in writing. If applicable, the Board of Commissioners shall advise the applicant to initiate the applicable process.
- F. Applications on improper towers. Notwithstanding the foregoing, the Board of Commissioners is not obligated to approve an application for new construction and/or

installation of all wireless communications facilities that include new utility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, and non-substantial changes to non-small wireless facilities on a wireless communications support structure or base station that was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative state or local regulatory approval.

- G. Failure to act. If the Board of Commissioners does not approve or deny an application for the construction and/or installation of all wireless communications facilities that constitute new construction and/or installation of all wireless communications facilities that include new utility poles for the siting of small wireless facilities in the ROW, the collocation of non-small wireless facilities, substantial changes to small wireless facilities, and non-substantial changes to non-small wireless facilities within 90 days of receipt of the application or any applicable tolling periods thereafter, the applicant may notify the Board of Commissioners in writing that the review period has expired. Upon the Board of Commissioners receipt of this notice from the applicant, the application shall be deemed granted.
- H. Notwithstanding any other regulation to the contrary, the Board of Commissioners may relax any requirement, at its sole and absolute discretion for any or no reason.

23-11 APPLICATION REQUIREMENTS FOR COLLOCATION AND NON-SUBSTANTIAL CHANGES TO SMALL WIRELESS FACILITIES.

- A. An application for collocation and non-substantial changes to small wireless facilities shall not be subject to site plan review and shall not require compliance with subsection 23-9, provided the application meets the following requirements.
 - 1. If collocation to or non-substantial change to an existing wireless communications support structure, the existing structure shall have been previously granted all necessary approvals by the appropriate approving authority.
 - 2. The proposed application satisfies the federal and State requirements to meet the standards for collocation.
 - 3. The proposed collocation and/or change complies with the final approval of the wireless communications support structure and all conditions attached thereto and does not create a condition for which variance relief would be required pursuant to N.J.S.A. 40:55D-1, et seq., or any other applicable law, rule, or regulation.
- B. Each application shall be limited to a request to construct and/or install a total of 10 wireless communications facilities that constitute collocation and non-substantial changes to small wireless facilities.
- C. All applications shall be submitted to the Municipal Clerk on the proscribed application and checklist form(s) and shall include the following information.
 - 1. A completed application and application checklist.
 - 2. A statement and supporting proofs that the application qualifies under this section.
 - 3. The identity of the owner of the property, structure, and/or building and a copy of the agreement relating to N.J.S.A. 48:3-18.
 - 4. Certification that the applicant possesses the legal authority to collocate and/or change the wireless communications support structure, which may include approvals from the jurisdiction authorizing the initial placement of the wireless communications support structure and transmission equipment.
 - 5. Fully-executed indemnification and hold harmless agreements prepared by the Borough, which are provided with the application package.

6. A scaled location plan clearly indicating the location, type, and height of the proposed wireless communications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed wireless communications facility and any other structures, topography, parking, and other information as required by the Borough Code, or as required by the Borough or Board Engineer, to enable comprehensive review of the application.
7. The separation distance from other wireless communications facilities described in the inventory of existing sites shall be shown on an updated location plan or map certified by a licensed engineer or licensed land surveyor. The applicant shall also identify the type of construction of the existing wireless communications support structure(s) and the owner/operator of wireless communications support structure(s).
8. A description of the type and quantity of equipment to be installed and the number and size of any equipment cabinets to be installed.
9. A description of any excavation required.
10. A description of any change in wireless communications support structure height and/or width as a result of the proposed collocation, removal, or replacement.
11. A plan evidencing the development's compliance with the applicable requirements, including, but not limited to, the architecture, aesthetics, color, and use of stealth technology.
12. A written report of the suitability or non-suitability of the use of existing wireless communications facilities or other structures for services to be provided through the use of the proposed new wireless communications facility, including certification from a structural engineer that the existing utility pole is structurally suitable and safe for small wireless facilities, collocation and/or non-substantial change.
13. A report from a qualified expert certifying that the wireless communications facility complies with the latest structural and wind loading requirements as set forth in the requirements as set forth in the International Building Code, New Jersey State edition, as amended, or the applicable New Jersey structural and wind requirements, including a description of the number and type of antennae it is designed to accommodate.
14. A statement by the applicant demonstrating whether construction of the wireless communications facility will accommodate collocation of additional antenna for future users. The statement shall commit the wireless communications support structure owner and successors in interest.
15. Elevations of all proposed wireless communications facilities generally depicting all existing and proposed antennae, wireless communications support structures, platforms, finish materials, as well as all other accessory equipment.
16. An inventory of its existing wireless communications facilities or sites approved for wireless communications support structures or antennae within the jurisdiction of the Borough.
17. Documentation of compliance with all of the applicable requirements of the Borough ordinances.

23-12 REVIEW OF APPLICATIONS THAT CONSTITUTE COLLOCATION AND NON-SUBSTANTIAL CHANGES TO SMALL WIRELESS FACILITIES.

- A. Initial review. The Board of Commissioners shall review the application with consultation with the Borough Engineer, the Borough Attorney, and any other consultants and/or experts deemed necessary to determine whether the application qualifies as a request for collocation, whether the change proposed is non-substantial.

The Board of Commissioners shall review the application and advise the applicant within 30 days as to whether the Borough deems that site plan approval by the Land Use Board or compliance with subsection 23-9 are required. If site plan approval or compliance with subsection 23-9 are deemed to be required, the applicant shall proceed in accordance with the applicable regulations.

- B. Timeframe for review. The Board of Commissioners shall review and approve or deny the application within 60 days of receipt. This 60-day period may be extended by mutual agreement of the Borough and the applicant.
- C. Incomplete applications. The Board of Commissioners may toll the 60-day timeframe by notifying the applicant, within 30 days of receipt of submission of an application, that the application is incomplete. Such notification shall set forth all outstanding information, as well as the applicable Code provision, ordinance, application instruction, or publicly stated procedure requiring the information to be submitted. The 60-day timeframe shall begin again upon receipt of the supplemental submission.
- D. Subsequent incomplete applications. The Board of Commissioners may thereafter toll the 60-day timeframe by notifying the applicant, within 10 days of receipt of the supplemental submission, that the applicant did not provide the information identified in the original notice delineating missing information. Second or subsequent notices of incompleteness may not specify missing documents or information not previously delineated in the original notice of incompleteness.
- E. Complete applications. The Board of Commissioners shall, within the 60-day timeframe, approve all complete applications for the collocation and non-substantial changes to small wireless facilities and that do not otherwise violate applicable health, safety, and other requirements set forth in this section. If the Board of Commissioners determines that an application fails to comply with this section, it shall notify the applicant of same in writing. If applicable, the Board of Commissioners shall advise the applicant to initiate the applicable process.
- F. Applications on improper towers. Notwithstanding the foregoing, the Board of Commissioners is not obligated to approve an application for small wireless facilities, collocation, removal, or replacement of equipment on a wireless communications support structure or base station that was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative state or local regulatory approval.
- G. Failure to act. If the Board of Commissioners does not approve or deny an application for collocation and non-substantial changes to small wireless facilities within 60 days of receipt of the application or any applicable tolling periods thereafter, the applicant may notify the Board of Commissioners in writing that the review period has expired. Upon the Board of Commissioners receipt of this notice from the applicant, the application shall be deemed granted.
- H. Notwithstanding any other regulation to the contrary, the Board of Commissioners may relax any requirement, at its sole and absolute discretion for any or no reason.

23-13 GENERAL REQUIREMENTS FOR THE CONSTRUCTION AND/OR INSTALLATION OF ALL WIRELESS COMMUNICATIONS FACILITIES THAT CONSTITUTE A NEW TOWER AND TOWER-BASED WIRELESS COMMUNICATIONS FACILITY, NON-COLLOCATION, AND/OR SUBSTANTIAL CHANGES TO WIRELESS COMMUNICATIONS FACILITIES.

- A. Uniform Construction Code; safety standards; standard of care. Wireless communications facilities shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, foundation, safety, and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (“ANSI”) Code, National Electrical Safety Code, National Electrical Code, the New Jersey Uniform Construction Code and the applicable standards for towers that are published by the Electronic Industries Association, the Borough Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any tower-based wireless communications facility shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Borough.
- B. Collocation. An application shall not be approved unless the Land Use Board finds that the wireless communications equipment cannot be accommodated on an existing

or approved structure or building. Any application shall include a comprehensive inventory of all existing towers and other suitable structures within a 3-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Borough that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

- C. Wind. Wireless communications support structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association.
- D. Height. Wireless communications facilities shall be designed at the minimum functional height and shall not exceed a maximum total height of 100 feet, which height shall include all subsequent additions or alterations. All applicants must submit documentation to the Land Use Board justifying the total height of the structure.
- E. Public safety communications. No wireless communications facilities shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- F. Maintenance. The following maintenance requirements shall apply:
 - 1. Wireless communications facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair;
 - 2. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Borough's residents;
 - 3. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents; and
 - 4. Except in the case of documented emergencies, 5-day written notice of any and all maintenance activities shall be provided to the Chief of Police and the Department of Public Works. Written notice of emergencies and documented proof of same shall be provided to the Chief of Police and the Department of Public Works as soon as practicable, but in no case more than 48 hours from the date of emergency.
- G. Radio frequency emissions. No wireless communications facilities shall, by itself or in conjunction with other wireless communications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- H. Identification. All wireless communications facilities shall post a notice in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency, subject to approval of the Land Use Board.
- I. Lighting. Wireless communications facilities shall not be artificially lighted, except as required by law and as may be approved by the Land Use Board. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under State and federal regulations.
- J. Appearance and visual compatibility requirements.
 - 1. All wireless communications support structures and facilities shall be located, designed, and screened to blend with the existing natural or building surroundings so as to minimize visual impacts through the use of the latest stealth technology, including color and camouflaging, architectural treatment, landscaping, and other available means, considering the need to be compatible with neighboring residences and the character of the community. The wireless communications facility shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact.

2. Any height increases to an existing tower-based wireless communications facility shall require prior approval of the Land Use Board. The Land Use Board shall have the discretion to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Borough.
3. Wireless communications facilities shall be designed structurally, electrically, and in all respects to accommodate both the wireless communications facility applicant's antennae and comparable antennae for future users.
4. Towers shall either maintain a galvanized steel finish, be painted a neutral color, and employ stealth technology so as to reduce visual obtrusiveness.
5. At the wireless communications equipment building, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and surrounding buildings.
6. All wireless communications support structures shall be designed to preserve scenic vistas and views of the Atlantic Ocean, Barnegat Bay, Little Egg Harbor, all Inlets, cultural and history landmarks, and unique geographic and topographic features. Natural features such as trees, views, natural terrain, open waters, and natural drainage ridge lines shall be preserved whenever possible in locating and designing a tower. Towers shall further be designed and located to minimize impact on open space and Green Acres properties.
7. Any and all buildings or structures relating to the wireless communications support structures shall be located, designed, and screened to blend with the existing natural or building surroundings so as to minimize visual impacts through the use of stealth technology.
8. Any and all buildings or structures relating to the wireless communications support structures shall not contain more than 1,600 square feet of gross floor area or be more than 15 feet in height.
9. Equipment storage buildings or cabinets shall comply with all applicable zoning and building codes.
10. The wireless communications equipment building shall not exceed 10 feet for flat roofs or 15 feet for pitched roofs, which shall have a minimum vertical rise of 6 inches for every 12 inches of horizontal run, and the building must blend architecturally with any existing building on the property. Pitched roofs shall be permitted only where the applicant is proposing a structure designed to blend with the local architectural context.
11. When a location out of the view from off-tract properties is not possible, appropriate foundation planting shall be provided outside the wireless telecommunications equipment building.
12. Landscaping. The following requirements shall govern the landscaping surrounding towers for which site plan approval is required.
 - (i) Wireless communications facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences.
 - (ii) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
13. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the approving authority if the goals of this section would be better served thereby. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible.

14. An individual wireless carrier shall not occupy more than 400 square feet of the equipment building.
- K. Noise. Wireless communications facilities shall be operated and maintained so as not to produce noise in excess of applicable noise standards under State law and the Borough Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- L. Aviation safety. Wireless communications facilities shall comply with all federal and State laws and regulations concerning aviation safety.
- M. Nonconforming uses. Nonconforming wireless communication facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of the Borough Code.
- N. Removal. In the event that use of a wireless communication facility is planned to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned based wireless communication facilities or portions of based wireless communication facilities shall be removed as follows:
1. All unused or abandoned wireless communication facilities and accessory facilities shall be removed within 6 months of the cessation of operations at the site unless a time extension is approved by the Borough.
 2. If the wireless communication facility and/or accessory facility is not removed within 6 months of the cessation of operations at a site, or within any longer period approved by the Borough, the wireless communication facility and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner.
 3. Any unused portions of the wireless communication facilities, including antennae, shall be removed within 6 months of the time of cessation of operations. The Borough must approve all replacements of portions of a tower-based wireless communication facility previously removed.
- O. Additional antennae. As a condition of approval for all wireless communications facilities, the applicant shall provide the Borough with a written commitment that it will allow other service providers to collocate antennae on the wireless communications facilities where technically and economically feasible. The owner of a tower-based wireless communications facility shall not install any additional antennae without obtaining the prior written approval as required in this section.
- P. Environmental. Wireless communication facilities shall comply with all applicable environmental regulations.
- Q. Visual or land use impact. The Land Use Board shall have the discretion to deny an application for the construction or placement of any wireless communications facility based upon visual and/or land use impact.
- R. Inspection. The Borough shall possess the right to inspect any wireless communications facility to ensure compliance with the provisions of the Borough Code or State or federal law. The Borough and/or its agents shall have the authority to enter the property upon which a wireless communications facility is located at any time, upon reasonable notice to the operator, to ensure such compliance. If, upon inspection, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- S. Setbacks. The following setback requirements shall apply to all towers:

1. Towers must be set back a distance equal to at least 100% of the height of the tower from any adjoining lot line and all non-appurtenant buildings and structures to ensure public safety in the event of a collapse or fall of the tower, provided that distance is no closer than the building setback applicable to the zoning district.
 2. Accessory buildings must satisfy the minimum zoning district setback requirements.
 3. No tower shall exist within required buffer or conservation easement areas.
- T. Separation distance from tower to tower. No tower shall be within 1,500 feet of another tower. Tower separation shall be measured from the base of the tower to the base of the other tower.
- U. Insurance requirements. All applicants shall be required to provide proof of and maintain comprehensive general liability insurance covering the tower-based wireless communications facility in the minimum coverage amount of \$5,000,000.00 for any 1 claim and \$10,000,000.00 for any aggregate claim. The insurance policy shall name the Borough as an additional insured. The existence of any available and/or applicable insurance shall not waive or release applicant from the obligations set forth required indemnification agreement included in the application.
- V. Fence/screen.
1. A security fence having a maximum height of 8 feet shall completely surround any tower-based wireless communications facility, guy wires, or any building housing wireless communications facility equipment.
 2. An evergreen screen that consists of a hedge, or a row of evergreen trees shall be located along the perimeter of the security fence.
 3. The wireless communications facility applicant shall submit a landscape plan for review and approval by the Borough Commission for all proposed screening.
- W. Accessory equipment.
1. Ground-mounted equipment associated to, or connected with, a tower-based wireless communications facility shall be underground. In the event that an applicant can demonstrate that the equipment cannot be located underground to the satisfaction of the Borough Engineer, then the ground mounted equipment shall be screened from public view using stealth technologies, as described above.
 2. All utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- X. Access road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to tower-based wireless communications facility. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the wireless communications facility owner shall present documentation to the Borough that the property owner has granted an easement for the proposed facility.
- Y. Bond. Prior to the issuance of a permit, the owner of a tower-based wireless communications facility outside the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in the State and maintain a bond or other form of security acceptable to the Borough Attorney, in an amount of \$500,000 to assure the faithful performance of the terms and conditions of the Borough Code and as a guarantee that no such installation or equipment exceeds or will exceed the allowable FCC limits for radio frequency emissions and radiation exposure to the general public. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond

with the Borough and the bond shall be held and maintained during the entire period of the owner's operation of each wireless communications facility.

- Z. Indemnification. All applicants shall be required to execute an indemnification agreement in the form required and pursuant to which the owner shall agree to defend, hold harmless, and indemnify the Borough, its officers, employees, agents, attorneys, volunteers, and independent contractors to the fullest extent under the law.

23-14 GENERAL REQUIREMENTS FOR NEW CONSTRUCTION AND/OR INSTALLATION OF ALL WIRELESS COMMUNICATIONS FACILITIES THAT INCLUDE NEW SMALL WIRELESS FACILITY POLES FOR THE SITING OF SMALL WIRELESS FACILITIES IN THE ROW, THE COLLOCATION OF NON-SMALL WIRELESS FACILITIES, NON-SUBSTANTIAL CHANGES TO NON-SMALL WIRELESS FACILITIES, AND THE COLLOCATION OF AND NON-SUBSTANTIAL CHANGES TO SMALL WIRELESS FACILITIES.

- A. Time, place and manner. The Borough shall determine the time, place, and manner of construction, maintenance, repair, and/or removal of all wireless communications facilities based on public safety, traffic management, physical burden on the ROW, public health, welfare, and safety, and related considerations.
- B. Small wireless facilities, collocation, and non-substantial changes to wireless communications facilities shall be limited to the placement of wireless communications on utility poles and small wireless facility poles inside the ROW.
- C. No small wireless facility poles shall include any visible exterior lighting of any kind.
- D. All ROW regulations shall apply to all entities and applicants, regardless of whether the ROW is owned and/or controlled by the County or the State.
- E. The collocation of small wireless facilities on utility poles in the ROW, the replacement of utility poles to site small wireless facilities in the ROW, and the construction of new small wireless facility poles in the ROW for the purpose of siting small wireless facilities in the ROW shall not constitute towers or tower-based wireless communications facilities and shall comply with the applicable regulations and the following.
1. No utility poles or small wireless facility poles, inclusive of any and all antennae and equipment, shall exceed 40 feet in height.
 2. No new small wireless facility poles constructed for the purpose of siting small wireless facilities in the ROW shall be placed within 300 feet of any other existing utility pole that supports a small wireless facility or any other small wireless facility pole. The Board of Commissioners may relax this requirement, at its sole and absolute discretion for any or no reason, to 200 feet.
 3. The siting of new small wireless facility poles shall not be greater than 5 feet from the point where the shared property line between 2 properties and the ROW intersect. Small wireless facilities in the ROW may be sited by way of replacement utility poles within 10 feet in non-residential zones and 5 feet in residential zones from the point of the preexisting utility pole that shall be replaced. All small wireless facilities, including the foregoing, shall be only permitted in the ROW by collocation on existing utility poles or replacement of existing utility poles in all zones if within 15 feet from the point where the shared property line between 2 properties and the ROW intersect.
 4. Where the applicant has demonstrated that an existing utility pole can be used, the antennae shall be mounted to the existing pole in a manner that preserves the structural integrity and aesthetics of the pole.
 5. The replacement of existing utility poles and siting of small wireless facility poles shall comply with all applicable federal, State, and local laws and regulations, including N.J.S.A. 48:17-8.

6. Replacement utility poles shall be fabricated using the same materials as the pole to be replaced, shall be the same diameter, and shall be placed in the same location.
 7. Unless otherwise permitted by the Board of Commissioners, at its discretion, new small wireless facility poles shall be fabricated using the same materials as the existing, neighboring utility poles.
 8. Panel antennae are not permitted unless the applicant provides evidence that establishes a cylindrical antenna or antennae are not technically feasible.
 9. Only 1 omnidirectional (rod or cannister) antenna and 4 directional antennae panels shall be permitted per utility pole and small wireless facility pole. No omnidirectional antenna shall be permitted to exceed 8 feet in height and the width of the pole by more than a total of 6 inches. No directional antenna panel shall be permitted to exceed 2 feet in width, 8 feet in height, and 9 inches deep. No parabolic (disc) antennae shall be permitted on any utility pole or small wireless facility pole.
 - i. 1 remote radio head (RRH) or remote radio unit (RRU) shall be permitted on each utility pole or small wireless facility pole. An RRH and RRU is not considered an antenna.
 10. The diameter of small wireless facility poles shall be limited to 4.5 feet.
 11. Small wireless facility poles shall be set back from curbs, offset from driveways, offset from trees, and shall not be located within 10 feet of any energized line.
- F. Except as otherwise provided in 23-14.E.2 for small wireless facilities, no wireless communications facilities, including small wireless facilities, shall be located within 300 feet of any other wireless communications facilities.
- G. All ground-level cabinets for wireless communications facilities shall comply with the following:
1. No ground-level cabinets shall be permitted in any residential zone.
 2. Permitted ground-level cabinets shall:
 1. Be less than 28 cubic feet in volume;
 2. Not be sited in any site triangle and shall not inhibit site at any intersection; and
 3. Be located greater than 18 inches of the face of a curb;
 4. Allow sufficient room for the public to pass and repass across the ROW and sidewalks.
- H. Pole-mounted antennae and cabinets shall comply with the following:
1. Pole-mounted antennae are permitted on utility poles and small wireless facility poles in all zones, provided that each:
 - (i) Does not exceed 3 cubic feet in volume;
 - (ii) Not be sited in any site triangle and shall not inhibit pedestrian and vehicular site lines at any intersection; and
 - (iii) Allows sufficient room for the public to pass and repass across the ROW and sidewalks.
 2. Pole-mounted cabinets are permitted on small wireless facility poles and utility poles, provided that each:
 - (i) Does not exceed 16 cubic feet;

- (ii) Not be sited in any site triangle and shall not inhibit site at any intersection;
 - (iii) Allows sufficient room for the public to pass and repass across the ROW and sidewalks, does not diminish the usability of the sidewalks, and otherwise does not obstruct, impede, or hinder the usual travel or public safety on the ROW;
 - (iv) Is installed at least 8 feet above the ground, and, if any wireless facilities or equipment are projecting toward the street or sidewalk, the base of the attachment shall be installed no less than 17 feet above the street or sidewalk;
 - (v) No protrusion from the outer circumference of the pole shall be more than 18 inches;
 - (vi) Is limited to a total volume of all installed equipment external to the pole (including, but not limited to, cabinets, vaults, boxes, and antennae) that does not exceed 28 cubic feet, which maximum applies to all equipment installed at the time of the original application and includes any equipment to be installed at a future date.
- I. Uniform Construction Code; safety standards; standard of care. Any wireless communications facility shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, safety, and safety-related codes, including, but not limited to, the most recent editions of ANSI, National Electrical Safety Code, National Electrical Code, the State Uniform Construction Code and the applicable standards for towers that are published by the Electronic Industries Association, the Borough Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any wireless communications facility shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Borough.
 - J. Wind. Wireless communications facilities shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association.
 - K. Public safety communications. Wireless communications facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
 - L. Aviation safety. Wireless communications facilities shall comply with all federal and State laws and regulations concerning aviation safety.
 - M. Radio frequency emissions or radiation. Wireless communications facilities shall not, by themselves or in conjunction with other wireless communications facilities, generate radio frequency emissions or radiation in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
 - N. Separation. Separation distance from wireless communications facilities and antennae. Except as otherwise provided in 23-14.E.2 for small wireless facilities, no wireless communication facility or antennae shall be within 300 feet of another. The separation shall be measured from the base of the utility pole and/or small wireless facility pole to the base of the other utility pole and/or small wireless facility pole.
 - O. Noise. Wireless communications facilities shall be operated and maintained so as not to produce noise in excess of applicable noise standards under State law and the Borough Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
 - P. Historic buildings or districts. No wireless communications facility may be located within 150 feet of any building or structure that is listed on either the National or State Registers of Historic Places or the official historic structures and/or historic districts

list maintained by the Borough, or has been designated by the Borough as being of historic significance.

- Q. Visual impact and safety. The Borough reserves the right to deny an application for the construction or placement of any wireless communications facilities based upon visual and/or land use impact and require design modification as a pre-condition to approval. No wireless communications facility shall be permitted in any site triangle or otherwise interfere with site lines and/or the public health, welfare, and safety.
- R. Removal. In the event that use of the wireless communications facility is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned wireless communications facilities or portions of wireless communications facilities shall be removed as follows:
1. All abandoned or unused collocation of and changes to wireless communications facilities and accessory equipment shall be removed within 3 months of the cessation of operations at the site unless a time extension is approved by the Borough;
 2. If the wireless communications facilities and accessory equipment is not removed within 3 months of the cessation of operations at a site, or within any longer period approved by the Borough, the wireless communications facilities and/or associated equipment may be removed by the Borough and the cost of removal assessed against the owner.
- S. Maintenance. The following maintenance requirements shall apply:
1. Wireless communications facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair;
 2. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of Borough's residents;
 3. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents; and
 4. Except in the case of documented emergencies, 5-day written notice of any and all maintenance activities shall be provided to the Chief of Police and the Department of Public Works. Written notice of emergencies and documented proof of same shall be provided to the Chief of Police and the Department of Public Works as soon as practicable, but in no case more than 48 hours from the date of emergency.
- T. Bond. Upon approval of the application and prior to the issuance of a permit, the owner of each wireless communications facility shall, at its own cost and expense, obtain from a surety licensed to do business in the State and maintain a bond, or other form of security acceptable to the Borough Attorney, in an amount of \$10,000 for each such wireless communications facility to assure the faithful performance of the terms and conditions of the Borough Code and as a guarantee that no such installation or equipment exceeds or will exceed the allowable FCC limits for radio frequency emissions and radiation exposure to the general public. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Borough and the bond shall be held and maintained during the entire period of the owner's operation of each wireless communications facility.
- U. Inspection. The Borough shall possess the right to inspect any wireless communications facility to ensure compliance. The Borough and/or its agents shall have the authority to enter the property upon which a wireless communications facility is located at any time, upon reasonable notice to the operator, to ensure such compliance. If, upon inspection, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into

compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

V. Insurance requirements. All applicants shall be required to provide proof of and maintain comprehensive general liability insurance covering the wireless communications facility in the minimum coverage amount of \$2,000,000.00 for any one claim and \$3,000,000.00 for any aggregate claim for each wireless communications facility location. The insurance policy shall name the Borough as an additional insured. The existence of any available and/or applicable insurance shall not waive or release applicant from the obligations set forth required indemnification agreement included in the application.

W. Indemnification. All applicants shall be required to execute an indemnification agreement in the form required and pursuant to which the owner shall agree to defend, hold harmless, and indemnify the Borough, its officers, employees, agents, attorneys, volunteers, and independent contractors to the fullest extent under the law.

23-15 EXISTING NONCONFORMING ANTENNAS OR TOWERS; DAMAGED.

Nonconforming wireless communications facilities, antennas, or wireless communications support structures that are damaged or destroyed may not be rebuilt without having to first obtain the appropriate approval from the appropriate approving authority and without having to meet the requirements specified in this section.

23-16 RELOCATION OR REMOVAL OF FACILITIES.

Within 60 days following written notice from Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of utility pole-based wireless communications facility in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any wireless communications facility when the Borough, consistent with its police powers and applicable regulations, shall determine that such removal, relocation, change, or alteration is reasonably necessary under the following circumstances:

1. The construction, repair, maintenance or installation of any Borough or other public improvement in the ROW;
2. The operations of the Borough or other governmental entity in the ROW;
3. Vacation of a street or road or the release of a utility easement; and/or
4. An emergency as determined by Borough.

23-17 ANNUAL RECERTIFICATION REQUIREMENTS FOR ALL WIRELESS COMMUNICATIONS FACILITIES.

All wireless communications facilities shall comply with the following annual re-certification requirements.

- A. Each year on July 1, the owner shall submit an affidavit which shall list all active wireless communications facilities it owns within the Borough by location and certifying that (a) the required insurance is maintained and provide a copy of the certificate of insurance per installation and (b) certify that each wireless communications facility has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning radio frequency exposure limits.
- B. The Borough shall have the right to employ a qualified radio frequency engineer to conduct an annual random test of wireless communications facilities to ensure their compliance with all FCC radio-frequency emission limits as they pertain to exposure to the general public. The cost of such tests shall be paid by the owner of the wireless communications facilities.
 1. In the event that such independent tests reveal that a wireless communications facility is emitting radio frequency emissions or radiation in excess of FCC

exposure guidelines as they pertain to the general public, the Borough shall notify the owner and all residents living within 1500 feet of the wireless communication facility of the violation, and the owner shall have forty-eight (48) hours to bring the wireless communications facility into compliance. Failure to bring the wireless communications facility into compliance shall result in the forfeiture of the bond, and the Borough shall have the right to (1) terminate the approval and/or (2) require the removal of such wireless communications facilities in the sole discretion of the Borough.

- C. The owner shall pay an annual fee set forth in subsection 23-6 per active wireless communications facility.
- D. Any wireless communications facility that is no longer in use shall be removed by the owner within 60 days of submission of the annual re-certification affidavit, at the owner's expense.
 - 1. Any wireless communications facility that is not removed within 60 days after being listed as no longer in use in the annual re-certification affidavit shall be subject to a fine of \$100/day until such installation is removed.
- E. Where such annual recertification has not been timely submitted, or equipment no longer in use has not been removed within the required 60-day period, no further applications for wireless communications facilities shall be accepted until such time as the annual re-certification has been submitted and all fees and fines paid.

23-18 NON-PERMITTED INSTALLATIONS.

Any wireless communications facilities constructed, erected, modified or enhanced prior to the issuance of the required approval set forth in this Chapter shall be removed prior to the submission of an application. No consideration of any application for a wireless communications facility shall be made, and no so-called "shot clock" for approval shall commence while such unauthorized installations remain.

23-19 ENFORCEMENT, VIOLATIONS, AND PENALTIES.

- A. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Chapter and any other remedy at law or in equity, the Borough may apply to a Federal District Court for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter.
- B. A violation of this Chapter shall be punishable as provided in Chapter 3-9 of the Borough Code.

23-20 MISCELLANEOUS.

- A. Police Powers. The Borough, by granting any permit or taking any other action pursuant to this section, does not waive, reduce, lessen, or impair the lawful police powers vested in the Borough under applicable federal, state, and local laws and regulations.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was duly introduced and passed on the first reading at a regular meeting of the Board of Commissioners of the Borough of Harvey Cedars held on **August 17, 2020**. Further notice is given that said Ordinance shall be considered for final passage and adoption at a regular meeting of said Board of Commissioners to be held on **September 4, 2020** at 4:30pm at the Borough Hall, 7606 Long Beach Blvd., Harvey Cedars, NJ, at which time and place any person desiring to be heard will be given an opportunity to be so heard.

Daina Dale, Municipal Clerk