

ORDINANCE 2021 - 21

ORDINANCE OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 299 OF THE TOWNSHIP CODE OF THE TOWNSHIP OF LITTLE EGG HARBOR ENTITLED "STREETS AND SIDEWALKS" SO AS TO ADD ARTICLE V, ENTITLED "RIGHTS OF WAY"

BE IT ORDAINED, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 299 of the Township Code of the Township of Little Egg Harbor entitled "Streets and Sidewalks" is hereby amended and supplemented to establish a new Article V to be entitled, "Rights of Way" which shall read in its entirety as follows:

ARTICLE V

RIGHTS OF WAY

§ 299-33. Rights of Way; Statement of purpose.

The Township finds and declares that it is necessary to set forth clear standards in relation to the siting of poles, cabinets and antennas for the benefit of its citizens and any utilities which use the Township's Rights-of-Way. The purpose of this chapter is to protect the property of the Township and its citizens by creating permit system for all new and replacement poles, antennas and cabinets which are proposed to be placed in the municipal Right-of-Way.

§ 299-34 Rights of Way Permits; Definitions

For purposes of this Chapter 299, the following definitions shall apply:

- A. "Anticipated Municipal Expenses" shall mean the cost of processing an application for a Right-of-Way permit including, but not limited to all professional fees such as engineering, planning or attorneys fees such as are normally charged for approval escrows.
- B. "Cabinet" shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from in the municipal Right-of-Way.

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- C. "Electrical Distribution System" shall mean the part of the electrical system, after the transmission system, that is dedicated to delivering electric energy to an end user.
- D. "Existing Pole" shall mean a pole that is in lawful existence within the municipal Right-of-Way as of the effective date of this Ordinance.
- E. "Ground Level Cabinets" shall mean a Cabinet that is not attached to an existing pole and is touching the ground.
- F. "Municipal Right-of-Way" shall mean the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive or the like, held by the Township as an easement or in fee simple ownership. This term also includes Rights-of-Way held by the County of Ocean where the Township's approval is required for the use of the same pursuant to N.J.S.A. 27:16-6.
- G. "Pole" shall mean a long, slender, rounded piece of wood or metal.
- H. "Pole Mounted Antenna" shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells and outside distributed antenna systems.
- I. "Pole Mounted Cabinet" shall mean a Cabinet that is proposed to be placed on an existing or proposed Pole.
- J. "Proposed Pole" shall mean a Pole that is proposed to be placed in the municipal Right-of-Way.
- K. "Public Grounds" shall mean any lands, areas, buildings or installations owned by the Township of Little Egg Harbor or any of its Departments, agencies or commissions, and shall include municipal Board of Education lands, areas, buildings or installations.
- L. "Right-of-Way Agreement" shall mean an agreement that sets forth the terms and conditions for use of the municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.
- M. "Right-of-Way Permit" shall mean an approval from the Township, setting forth applicant's compliance with the requirements of this Chapter.



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N. "Surrounding Streetscape" shall mean existing Poles within the same Right-of-Way which are located within five hundred (500) feet of the proposed Pole.

O. "Smart Pole" or "Stealth Pole" shall mean a pole that conceals, disguises or camouflages one or more small wireless facilities and has additional technological capabilities for other features.

P. "Township Committee" shall mean the Township Committee of the Township of Little Egg Harbor.

Q. "Underground Cabinets" shall mean a Cabinet that is located beneath the surface of the ground.

R. "Utilities Regulated by the Board of Public Utilities" shall mean companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes of the State of New Jersey.

S. "Utility Service" shall mean electric, telephone or cable service.

§ 299-35 Application of this Article to Utilities Regulated by the Board Of Public Utilities; Other Entities

Notwithstanding any franchise or Right-of-Way agreement to the contrary, all facilities proposed to be placed within the municipal Right-of-Way by a utility regulated by the Board of Public Utilities and all other entities lawfully regulating any facility, equipment, antenna, cabinet or other installation within the municipal Right-of-Way shall be subject to the standards and procedures set forth within this Article and shall require Right-of-Way permits for the siting of poles, antennas, cabinets and related facilities, equipment or other installation within the municipal Right-of-Way.

§ 299-36 Pole Mounted Antennas, Access to Right-of-Way, Right-of-Way Agreements

- A. No person shall operate or place any type of pole mounted antenna within the municipal Right-of-Way without first entering into a Right-of-Way agreement pursuant to the provisions of this Article.
- B. The terms of said Right-of-Way agreement shall include:
 - i. A term not to exceed ten (10) years;
 - ii. Reasonable insurance requirements;

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- iii. A fine for unauthorized installations;
- iv. A reference to the siting standards set forth in this Article;
- v. Any other items which may reasonable be required for the applicant's operation within the municipal Right-of-Way, including but not limited to, solar panels, uses other than small wireless facilities, issues relating to data and camera access, USB charging stations, maintenance and emergency access.

§ 299-37 Rights of Way Permits; Siting Standards for Poles, Antennas and Cabinets in the Right-of-Way.

A. No pole, antenna or cabinet shall be installed in the municipal Right-of-Way without the issuance of a Right-of-Way Permit for that installation in accordance with the terms of this Article. The use of any pole, antenna or cabinet shall be limited to the provision of small wireless services. Any other uses on the municipal Right of Way, including but not limited to, Wi-Fi hotspots, digital billboards, electric charging stations or rental fees for drone charges, shall not permitted without consent of the Township.

B. Pole Siting Standards.

- i. **Height.** No pole shall be taller than thirty five (35) feet or one hundred and ten percent (110%) of the height of poles (except Atlantic City Electric poles) in the surrounding streetscape, whichever is higher. Existing poles placed by Atlantic City Electric as of the effective date of this ordinance are exempted and shall not be used as a height standard in the above formula.
- ii. **Distance from the curb line:** No pole shall be farther than eighteen (18) inches from the curb line.
- iii. **Location, Safety and Aesthetics:** Any pole erected in the municipal Right-of-Way pursuant to this Article shall meet the following requirements:
 - 1. Pole shall be located on the opposite side of the street from any part of the electrical distribution system; and

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2. Pole shall be three hundred (300) linear feet from any other existing pole or proposed pole along the same side of the street; and
3. Pole shall be fifty (50) feet from any primary residential structure; and
4. Pole shall not be located in an area with Underground Utilities; and
5. Pole shall not inhibit any existing sight triangles; and
6. Pole shall allow adequate room for the public to pass and re-pass along and across the public Right-of-Way; and
7. Pole shall be finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
8. Pole shall be a stealth pole or “smart pole” unless the applicant demonstrates why same would not be technologically feasible at that location.

- iv. Poles are prohibited in the municipal Right-of-Way located in any public property.
- v. These siting standards shall apply to any proposed new pole and to any replacement of an existing pole.

C. Ground Level Cabinet Site Standards.

Ground level cabinets are prohibited in the municipal Right-of-Way on any public property.

D. Underground Cabinet Site Standards.

- i. Underground Cabinets are the preferred method of cabinet siting within the Township of Little Egg Harbor and permitted in the municipal Right of Way in all Zones.
- ii. Underground Cabinet Siting shall not disturb any underground utilities.
- iii. The Township shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any Underground Cabinet.

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E. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.

- i. Pole Mounted Antennas are permitted on existing poles, provided that each pole mounted antenna:
 - 1. Does not exceed three (3) cubic feet in volume; and,
 - 2. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 - 3. Does not inhibit any existing sight triangles; and
 - 4. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.

- ii. Pole Mounted Cabinets are permitted on existing poles, provided that each pole mounted antenna:
 - 1. Does not exceed sixteen (16) cubic feet in volume; and
 - 2. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 - 3. Does not inhibit any existing sight triangles; and
 - 4. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.

- iii. The Township shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna or pole mounted Cabinet.

F. Pole Mounted Antenna and Underground Cabinet Siting Standards.

- i. Pole Mounted Antennas are permitted on existing poles, provided that each pole mounted antenna:
 - 1. Does not exceed three (3) cubic feet in volume; and

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1. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
2. Does not inhibit any existing sight triangles; and
3. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.

ii. Underground Cabinets are permitted with existing poles, provided that each underground cabinet shall not disturb any underground utilities.

iii. The Township shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna and Underground Cabinet.

§ 299-38 Application Process

- A. Pre-Application Meeting. Prior to making a formal application with the Township for use of the municipal Right-of-Way in accordance with this Article, it is strongly recommended that all applicants confer with the Township Engineer to review the scope of the applicant's proposal.
- B. All applications made under this Section and Article shall be expedited so as to comply with the shot clocks set forth in the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment by the Removal Of Barriers To Infrastructure Investment," WT Docket No. 17-79; WC Docket No. 17-84.
- C. Every application made under this Article must include a stamped survey prepared by a New Jersey licensed land surveyor demonstrating that any proposed pole, cabinet or antenna is located within the municipal Right-of-Way. Any such application which does not include such survey shall immediately be deemed incomplete.
- D. New Poles, Ground level Cabinets and Underground Cabinets. The applicable Township Planning Board shall, pursuant to the advisory powers granted under N.J.S.A. 40:55D-25(B)(3), review all applications for the placement of new or replacement poles, ground level cabinets and/or underground cabinets proposed to be located in the municipal Right-of-Way and advise the Township Committee of its recommendations to approve, deny or approve with conditions. If the Township Planning Board

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recommends a denial of such application, it shall set forth the factual basis for such denial in writing.

- E. The Township Engineer shall review all applications made pursuant to this Article and advise the Township Committee of his or her recommendation to approve, deny or approve with conditions such applications.
- F. The Township Committee shall, by resolution, approve or disapprove every Right-of-Way Permit application based upon the recommendations provided pursuant to subsections (D) and (E) above.
- G. If the Township Committee denies any application made under this Article, it shall do so in writing and set forth the factual basis therefor.
- H. Waiver. The Township Committee may waive any siting standard set forth in this Article where the applicant demonstrates that strict enforcement of any siting standard will:
 - i. Prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C.A. § 253(a); or
 - ii. Prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C.A. § 332(c)(7)(B)(i)(II); or
 - iii. Will violate any requirement set forth in the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment by the Removal Of Barriers To Infrastructure Investment," WT Docket No. 17-79; WC Docket No. 17-84.

§ 299-39 Right of Way Permit Fees and Deposit Toward Anticipated Municipal Expenses.

- A. Every Right-of-Way Permit application must include a Right-of-Way Permit fee in the following amounts:
 - i. One (1) to five (5) sites - \$500.00.
 - ii. Each additional site - \$100.00.
- B.. Deposit toward anticipated municipal expenses.
 - i. In addition to the Right-of-Way Permit application fee, the Township shall require the posting of an escrow in the amount of two thousand dollars (\$2,000.00) toward anticipated municipal expenses including, but not limited to planner, engineer, legal or other municipal fees related to review of an

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application for a Right-of-Way Permit under this Article.

ii. The applicant's deposit shall be deposited in an escrow account. If at any time such deposit contains insufficient funds to enable the Township to conduct its review of the Right-of-Way Permit application, the Township Engineer shall provide the applicant with notice of an insufficient balance. The applicant shall deposit within ten (10) days of such notice such additional deposit as shall be agreed upon by the applicant and the Township Engineer to complete the Township's review.

iii. After a final decision has been made by the Township Committee in accordance with this Article regarding the applicant's Right-of-Way Permit application, any unused balance from the applicant's deposit toward anticipated municipal expenses shall be refunded.

§ 299-40 Miscellaneous Provisions.

- A. Any approval granted pursuant to this Article does not relieve the applicant from receiving consent of the owner of the land above which an applicant's facility may be located as required under New Jersey law.
- B. Applicant must, in addition to obtaining a Right-of-Way Permit pursuant to this Article, also receive any and all necessary road opening permits, construction permits and any other permits required under the Township Code of the Township of Little Egg Harbor including, but not limited to the Uniform Construction Code.
- C. Applications for Township consent pursuant to N.J.S.A. 27:16-6 requires adherence to the standards set forth in this Article. No such applicant shall be required to enter into a Right-of-Way Agreement with the Township.

§ 299-41. Violations and penalties.

Any person violating or failing to comply with any other provision of this article shall, upon conviction thereof, be punishable by a fine of no less than \$100 and no more than \$1,000, by imprisonment not to exceed 90 days or by community service of not more than 90 days or any combination of fine, imprisonment and community service, as determined in the discretion of the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

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

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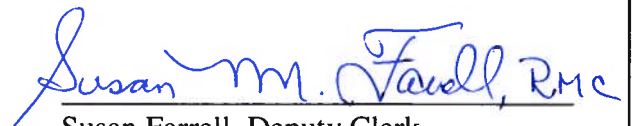
hereby repealed.

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

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

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Little Egg Harbor held on the 12th day of **August, 2021**, and will be considered for second reading and final passage at a regular meeting of the Township Committee to be held on the 9th day of **September, 2021**, at 7:00 p.m., in the Little Egg Harbor Municipal Building located at 665 Radio Road, in Little Egg Harbor Township, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.



Susan Farrell, Deputy Clerk
TOWNSHIP OF LITTLE EGG HARBOR

John Kehm, MAYOR

August 12, 2021

Motion to Introduce: Crea

Second: Scibetta

Stevens: yes Crea: yes Gormley: absent Scibetta: yes Kehm: yes

September 9, 2021

Motion to Adopt: Scibetta

Second: Gormley

Stevens: absent Crea: yes Gormley: yes Scibetta: yes Kehm: yes

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