

**ORDINANCE 27-2021**

**AN ORDINANCE OF THE BOROUGH OF AVON-BY-THE-SEA, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF AVON-BY-THE-SEA WITH THE ADDITION OF A CHAPTER §172 ENTITLED "COMMUNICATION FACILITIES RIGHT-OF-WAY PERMITS" TO PROVIDE FOR THE REGULATION OF SMALL CELL WIRELESS FACILITIES WITHIN THE MUNICIPAL RIGHTS-OF-WAY**

WHEREAS, the Borough of Avon-by-the-Sea ("Borough") is aware that certain technological developments have made access to its Municipal Rights-of-Way desirable by certain telecommunications companies for the placement of small cell wireless facilities, including but not limited to, the installation of antennas, small cells and other communication devices and associated equipment (collectively the "Small Cells"); and

WHEREAS, the Borough has determined that its Municipal Rights-of-Way, such as they are or may be, themselves constitute a valuable resource, finite in nature, and which exists as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and

WHEREAS, the Federal Telecommunications Act preserves local governments' ability to manage the public Rights-of-Way on a competitively neutral and non-discriminatory basis 47 U.S.C. 332 (c)(7)(A); and

WHEREAS, New Jersey municipalities must give consent before a Small Cell, i.e., a small antenna, can be placed on existing poles pursuant to N.J.S.A. 48:3-19 and for the erection of new poles within the public Rights-of-Way pursuant to N.J.S.A. 48:17-10; and

WHEREAS, the Federal Communications Commission (FCC) has recently adopted an order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" WT Docket No. 17-79; WC Docket 17-84, which places a shot clock on municipal approval for the placement of Small Cells on Existing Poles and the placement of New Poles in the Municipal Right-of-Way; and

WHEREAS, the erection of New Poles and Ground level Cabinets in the Municipal Right-of-Way raise significant aesthetic and safety concerns; and

WHEREAS, the FCC, in its recent order, provides that municipalities can impose aesthetic requirements on Small Cells where said requirement are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advance; and

WHEREAS, the Borough has determined 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 or will seek to make use of said Municipal Rights-of-Way.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Avon-by-the-Sea that:

The Code of the Borough of Avon-by-the-Sea is amended with the addition of Chapter 172 Communication Facilities Right-of-Way Permits, hereinafter "this Ordinance" or "this Chapter" or "Small Cell Ordinance".

**Section 1.**     Chapter 172 Communication Facilities Right-of-Way Permits

A.     Definitions

**Administrative Review** means ministerial review of an Application by the Borough to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.

**Antenna** means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless

**Services.** This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

**Applicable Codes** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Authority, including any amendments adopted by the Authority, or otherwise are applicable in the jurisdiction.

**Applicant** means any Person or Entity who submits an Application under this Chapter, such as a Provider described herein.

**Application** means a written request, on a form provided by the Borough of Avon-by-the-Sea.

**Authority** means the Board of Commissioners of the Borough of Avon-by-the-Sea. The term "Authority" and "Borough" are interchangeable.

**Collocate** means to install or mount a Small Wireless Facility in the Public Right-Of-Way on an existing Support Structure, on an existing Pole, on a new pole, or smart pole.

"**Collocation**" has a corresponding meaning.

**Communications Facility** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communications Services, including; (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole or Support Structure to which the equipment is attached.

**Communications Service** means cable service, as defined in 47 U.S.C. § 522(6); information service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

**Communications Service Provider** means a provider of Communications Services and includes a cable operator as defined in 47 U.S.C. § 522(5).

**Decorative Pole** means a Pole that is specially designed by the Authority and placed for aesthetic purposes and employs stealth technology.

**Consultant** means the Person appointed by the Borough to serve as the consultant for the Borough for all matters concerning this Chapter, and who may be contracted for professional services.

**Eligible Facilities Request** means an eligible facilities request as set forth in 47 C.F.R. Section 1.6100, as that section may be amended from time to time.

**FCC** means the Federal Communications Commission of the United States.

**Laws** means, collectively, any and all Federal, State or Local law, statute, common law, code, rule, regulation, order, or ordinance.

**Ordinary Maintenance and Repair** means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a communications Facility and/or the associated Support Structure or Pole, that does not require blocking, damaging or disturbing any portion of the Public ROW.

**Permit, "R.O.W. Permit" or "Small Cell Permit"** means a written authorization to install, at a specified location(s) in the Public ROW, a Communications Facility or a Pole to support a Communications Facility.

**Permittee** means an Applicant that has received a Permit under this Chapter.

**Person** means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a governmental entity.

**Pole** means a legally constructed pole, such as a utility, lighting or similar pole made of wood, metal or other material as determined by the Borough, located or to be located within the Public Right-of-Way. A Pole does not include a Support Structure.

**Provider** means a Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities.

**Public Right of Way or Public ROW** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, or similar purpose. The term does not include a federal interstate highway, state highway, county right of way or other areas that are not within the legal jurisdiction, ownership or control of the Authority.

**Replace or Replacement** means, in connection with an existing Pole or Support Structure, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable regulations in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

**Small Wireless Facility** means a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of not more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the Antenna, including the preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.

**Smart Pole** means a Decorative Pole that conceals, disguises or camouflages one or more Small Wireless Facility installation(s) and may include other features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for at least three (3) occupants and allow space for Borough use for other services and/or equipment. Smart Poles shall neither have protruding latches, external hinges, nor external cabling. The pole must be made of an inherently rust-resistant material (i.e. aluminum alloys or stainless steel). The design of the smart pole is within the exclusive discretion of Borough.

**State** means the State of New Jersey.

**Support Structure** means a structure in the Public ROW other than a Pole which is capable of supporting a Wireless Facility.

**Surrounding Streetscape** means the visual elements of a street, including the road, adjoining buildings, street furniture, trees and open spaces, etc., that combine to form the street's character.

**Wireless Facility** means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility. Throughout this Ordinance, the terms "Communications Facility", "Wireless Facility" and "Small Wireless Facility" may be used interchangeably and shall be taken to refer to the same thing unless the context clearly indicates otherwise.

**Wireless Services** means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

B. Access to Public Right of Way

Prior to installing in the Public R.O.W. any Communications Facility, or any Pole built for the sole or primary purpose of supporting a Communications Facility, a Person shall enter into a Right of Way Use Agreement with the Borough of Avon-by-the-Sea expressly authorizing use of the Public Right of Way for the Communications Facility or Pole proposed to be installed.

1. The term of the R.O.W. Use Agreement shall be a minimum of 15 years and shall not exceed 30 years.

2. The R.O.W. Use Agreement authorizes the Provider's non-exclusive use of the Public R.O.W. for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and to provide the services expressly authorized in the agreement subject to Applicable Codes and applicable laws, this Chapter and the terms and conditions of the agreement. The agreement authorizes use only of the public

R.O.W. in which the Borough has an actual interest. It is not a warranty of title or interest in any Public R.O.W. and it does not confer on the Provider any interest in any particular location within the Public R.O.W. No other right or authority is granted except as expressly set forth in the R.O.W. License Agreement. Nothing herein shall authorize the use of the Borough's Poles or Support Structures, in the Public R.O.W, without express approval from the Borough. All use of the Borough's Poles or Support Structures in the Public R.O.W. shall require a separate agreement and the payment of separate fees for such use.

3. The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, and Support Structures in the Public R.O.W. in a safe condition, and in good order and repair.

4. The Provider shall provide insurance and indemnification of the Borough as described in the R.O.W. Use Agreement. The insurance coverage limits must be at least as broad as follows:

a. Insurance. The Provider shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The Provider may use any combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non- contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by the Provider. Prior to the commencement of any work pursuant to this Ordinance the Provider shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Provider within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any of Provider or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance . Provider shall notify the Designee within fifteen (15) days of receipt of any claim or demand of Provider or its subcontractors, agents, employees, officer, servants, designees, guests or invitees by any aggrieved party for any work or action made pursuant to this Ordinance. The Borough shall be named as an additional insured. Provider shall provide Borough with renewal insurance.

b. Indemnification. Provider, its successors, assigns, contractors, sub-contractors, agents, servants, officers, professionals, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Provider's actions under this Ordinance and costs in connection therewith except to the extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the County, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Provider's activities pursuant to the rights granted in this

Ordinance. This indemnification shall also specifically include that the Borough retains the right to choose its own defense counsel in regard to any action at law or equity pursuant to this section.

C. R.O.W. Permit

1. No person may construct, maintain or perform any other work in the Public R.O.W. related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities without first receiving a Permit to the extent required under this Chapter, and any subsequent permits or authorizations required by applicable Laws or the Authority.

2. The Authority shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities or Poles, has applied for and received the R.O.W. Use Agreement required by this Chapter, or otherwise has a current and valid franchise with the Borough expressly authorizing use of the Public R.O.W. for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.

3. The Provider shall not locate or maintain its Communications Facilities, Wireless Facilities, Support Structure or Poles so as to unreasonably interfere with the use of the Public R.O.W. by the Borough, by the general public or by other persons authorized to use or be present in or upon the Public R.O.W.

4. The permitting process set forth herein may be revised, supplemented or otherwise amended or replaced by resolution of Board of Commissioners.

5. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the Borough's Wireless Siting Plan.

D. Location and Siting

1. Height. No Pole shall be taller than thirty-five (35) feet in height including the antennas or 110% of the height of Poles in the Surrounding Streetscape, whichever is higher.

2. Distance from curb line. No Pole shall be farther than eighteen (18) inches from the curb line.

3. Location, Safety and Aesthetics. No Pole shall be erected in the Right-of-Way unless it:

- a. Is replacing an Existing Pole;
- b. Is approved by the Authority;
- c. Is located within the Municipal Right-of-Way;
- d. Is at least five hundred (500) linear feet from any other Existing Pole or Proposed Pole, which is used to support a Small Wireless Facility;

e. Is not located in an area with Underground Utilities except as specified in subsection (9) below;

f. Does not inhibit any existing sight triangles;

g. Allows adequate room for the public to pass and re-pass across the Right-of-Way;  
and

h. Is a Smart Pole along Ocean Avenue or Main Street.

4. Applicant will comply with requests by the Authority to utilize stealth technology Smart Pole and Decorative Poles when requested to preserve the existing character and streetscape and minimize impact on surrounding properties by causing the proposed Pole and Small Cell to blend in compatibly with their background. Smart Pole and Decorative Pole must accommodate at least three (3) carriers per Small Wireless Facility deployment.

5. Any claim by Applicant of technical incompatibility, inability to use existing structure, or inability to collocate need to be proven by the Applicant, not disproved by Borough. Validity of said claims by Applicant is reserved within the sole discretion of Borough.

6. The Authority may require new poles to be Decorative Poles if appropriate.

7. Pole Mounted Antennas are permitted on New and Existing Poles, provided that each Pole Mounted Antenna:

a. Does not exceed three (3) cubic feet in volume; and

b. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and

c. Does not inhibit sight triangles; and

d. Allows adequate room for the public to pass and repass across the municipal right-of-way.

8. Pole Mounted Cabinets are permitted on New and Existing Poles, provided that each Pole Mounted Cabinet:

a. Does not exceed twenty-eight (28) cubic feet; and

b. Is finished and/or painted and otherwise camouflaged in conformance with best available stealth technology methods so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and

c. Does not inhibit sight triangles; and

d. Allows adequate room for the public to pass and repass across the municipal right-of-way.

9. No sign or artificial lighting shall be permitted on any Pole, Support Structure, or Small Wireless Facility, including Pole Mounted Antennas and Cabinets and Ground Mounted Cabinets, unless said sign or artificial lighting is required for safety or other reason by local, state or federal regulation, or by the FCC, Federal Aviation Administration (FAA) or other applicable authority with the capacity to promulgate regulations regarding same.

10. The Authority requires that an applicant provide a certification from a licensed structural engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.

11. Ground mounted equipment is prohibited.

12. All wireless equipment associated with the Pole, including the wireless equipment associated with the antenna and any preexisting associated equipment shall not be more than twenty-eight (28) cubic feet in volume.

13. The Provider shall upon completion of construction provide the Borough with as-built drawings and a map showing the location of the facility and equipment.

14. Fewest Possible New Poles. Applicant shall use existing Poles when possible for the placement of its Small Wireless Facilities and shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet the coverage and capacity requirements...

15. Fewest Possible Small Wireless Facilities. Applicant shall minimize the number of new proposed Small Wireless Facilities in the right-of-way to the fewest possible to meet its coverage and capacity requirements and, in furtherance of same, shall collocate on existing Poles and Support Structures whenever possible to minimize the number of required new Poles.

E. Restoration Requirements

1. The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public R.O.W. that is damaged or disturbed by the Provider's Communications Facilities, Poles or work in or adjacent to the Public R.O.W.

2. If the Provider fails to timely restore, repair or replace the Public R.O.W. as required in this subsection, the Authority or its contractor may do so and the Provider shall pay the Authority's costs and expenses in completing the restoration, repair or replacement.

F. Removal, Relocation and Abandonment

1. Within 90 days following written notice from the Authority, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles or Support Structures within the Public R.O.W., including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Borough has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any Borough improvement, the operations of the Borough in, under or upon the Public R.O.W., or otherwise is in the public interest. The Provider shall be responsible to the Borough for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate



Communications Facilities, Poles or Support Structures as required in this subsection. If removal or relocation is requested by the Borough, the Borough will work in good faith to identify a suitable alternative site and such removal or relocation shall not require an additional permit.

2. The Borough retains the right and privilege to cut or move any Communications Facility, Pole or, Support Structure located within the Public R.O.W. of the Borough, as the Borough may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Borough shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole or Support Structure. In all cases, the Borough shall notify the Provider after cutting or removing the Communications Facility, Pole or Support Structure as promptly as reasonably possible. Emergency response shall be coordinated between the Borough and Provider to the extent practicable under the circumstances.

3. A Provider shall notify the Borough of abandonment of any Communications Facility, Pole Support, or Structure at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole or Support Structure at the Provider's own expense, unless the Borough determines, in its sole discretion, that the Communications Facility, Pole or Support Structure may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles and Support Structures until they are removed from the Public R.O.W. unless the Borough agrees in writing to take ownership of the abandoned Communications Facilities, Poles or Support Structures. The Provider shall remain liable for annual ROW occupancy fee for balance of term.

4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles or Support Structures or remove any of its abandoned Communications Facilities, Poles or Support Structures as required in this subsection, the Borough or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Borough incurs arising from the delay.

G. Fees and Charges

1. One Time Fees and Recurring Rates. As consideration to the Borough for entering into the Right-of-Way Use Agreement and also as a condition precedent for the issuance of any required Permit pursuant to this Chapter, the Applicant shall pay the required one-time fees and recurring rates as set forth in this subsection, and which may be amended or modified from time to time per revision and modification to local, state and federal laws and regulations. Said fees shall include Application or One-Time Fees and Recurring Right-of-Way Occupancy Rates.

2. Permit Application Escrow. A Permit Application Escrow of \$2,000 per new Small Wireless Facility, including any new Pole or Support Structure, as applicable, and \$1,000 per alteration, expansion, modification to an existing Small Wireless Facility or Pole or Support Structure, shall be submitted along with each Application for a Permit and held in escrow to be billed against actual incurred costs. Any expenses above the escrow shall be invoiced to Applicant directly and shall be paid by Applicant prior to the issuance of any Permit.

3. Reasonable Approximation. All One-Time Fees will be a reasonable approximation of objectively reasonable costs.

4. One Time Fees Apply to All Work. One-time fees and event fees apply to the initial installation of facilities as well as to any subsequent upgrade, replacement, expansion, modification or alteration of same, with each instance of an upgrade, expansion, alteration, modification or repair being a separate project subject to a Permit application and One-Time Fees. Ordinary Maintenance and Repair does not trigger any One-Time Fees.

5. Consulting Fee. Applicant shall be responsible for consulting and professional fees which will be a reasonable reflection of objectively reasonable costs, which shall be paid from permit application escrow.

6. Annual ROW Occupancy Rate shall be \$350 per annum, and shall be paid within thirty (30) days of the issuance of the applicable Permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the Term. However, under no circumstances shall the Rate be remitted later than ninety (90) days after the full execution of the applicable Right-of-Way Use Agreement between Borough and Applicant.

7. Annual Attachment Rate, equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Borough for the attachment of each Small Wireless Facility to Borough-owned structures in the Public Right-of-Way. This amount shall be paid within thirty (30) days of issuance of the applicable Permit(s) and annually thereafter. The annual rates in this subsection and the Annual ROW Occupancy Rate subsection combined shall not exceed \$350 annually per Small Wireless Facility location.

8. All Fees and Rates will be applied in a non-discriminatory manner to all Communications Service Providers.

9. Other Fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Borough or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of the Borough owned Poles, Support Structures, ducts, conduits or other structures in the Public R.O.W., as set forth in attachment agreements authorizing such use.

#### H. Permit Applications

1. Permit Required. Pursuant to section C(1) of this Chapter, unless expressly authorized in this Chapter or in writing by the Authority, no Person may construct, install, modify, expand, alter or maintain in the Public R.O.W. any Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, including the installation or Collocation of Communications Facilities on existing Poles, Support Structures or other structures within the Public R.O.W. without first receiving a Permit. Notwithstanding the foregoing, in the event of an emergency, a Provider or its duly authorized representative may work in the Public R.O.W. prior to obtaining a Permit, provided that the Provider shall attempt to contact the Borough prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than 24 hours, after commencing the emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged

or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

2. Permit Application Requirements. The Application shall be made by the Provider or its duly authorized representative and shall contain the following:

a. The Applicant's name, address, telephone number, and email address, including emergency contact information for the Applicant.

b. The names, addresses, telephone numbers and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.

c. A description of the proposed work and the purposes and intent of the proposed Communications Facility, Pole, Support Structure or Wireless Facility (as applicable) sufficient to demonstrate compliance with the provisions of this Chapter

d. If applicable, a copy of the authorization for use of the property from the Pole or Support Structure owner on or in which the Communications Facility will be placed or attached.

e. Detailed construction drawings regarding the proposed Communications Facility, Pole, Support Structure or Wireless Facility (as applicable). Construction drawings shall include, at minimum, a clear delineation of the right-of-way, distance of the proposed Communications Facility, Pole or Support Structure from certain existing right-of-way features such as curb ramps for handicap accessibility pursuant to the Americans With Disabilities Act, sidewalk width and other details standard for these types of telecommunications installations in the public right-of-way.

f. Prior to installation of Communications Facility, including but not limited to Collocation on a Pole or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole or Support Structure will structurally support the Communications Facility in accordance with Applicable Codes.

g. For any new aboveground facilities, accurate visual depictions or representations.

h. The following additional permits, approvals and authorization, as each is reasonably applicable to the proposed Application:

i. Street opening permit, per Borough procedure

ii. Construction permit, per Borough procedure. This requirement may be waived if the appropriate code official determines that it is unnecessary per the proposed construction and installation of facilities

i. The Applicant shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Applicant shall further certify that they will encourage, manage and coordinate the location and placement of any interested carrier's equipment on the structure.

j. The application and permitting processes set forth herein may be revised, supplemented or otherwise amended or replaced by resolution of Board of Commissioners.

3. Proprietary or Confidential Information in Application. Applications are public records that may be made publicly available pursuant to the New Jersey Open Public Records Act. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the Borough shall treat the information as propriety and confidential, subject to the New Jersey Open Public Records Act and the Borough's determination that the Applicant's request for confidential or proprietary treatment of Application materials is reasonable. The Borough shall not be required to incur any costs to protect the Application materials from disclosure, other than the Borough's routine procedures for complying with the New Jersey Open Public Records Act.

4. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable laws and shall notify the Borough in writing at least 48 hours before performing the Ordinary Maintenance and Repair. Notwithstanding the foregoing, the Authority reserves the right to inspect Applicant's Small Wireless Facilities at any time in order to determine if the existing configuration matches the configuration contained in the most recently issued Permit, and the applicable Right-of-Way Use Agreement. Applicant shall bear costs for said inspections. If it is determined that an existing Small Wireless Facility is found to be larger than the dimensions specified in the most recently issued applicable Permit, then Applicant shall be in violation of this Chapter. Applicant shall receive notice from the Borough and, upon receipt of such notice, be required to restore the site within ten (10) days to the configuration of the most recently approved Permit or retroactively apply for Administrative Approval for the unapproved modifications.

5. Material Changes. Unless otherwise agreed to in writing by the Authority, any material changes to an Application, as determined by the Authority in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Chapter, unless otherwise provided by application Laws.

6. Application Fees. Unless otherwise provided the applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the required Fees, without which the Application shall be deemed incomplete.

7. Effect of Permit. A Permit from the Authority authorizes an Applicant to undertake only the activities in the Public R.O.W. specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public R.O.W.; a Permittee or Provider must obtain all necessary approvals from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant authority to the Applicant to interfere with other existing uses of the Public R.O.W.

8. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of 365 days after issuance, provided that the period may be extended for up to an additional 180 days upon written request for the Applicant (made prior to the end of the initial 365 day period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the Applicant.

9. Batch Permit. An Applicant may simultaneously submit no more than twenty-five (25) Applications for Communications Facilities, or may file a single, consolidated Application covering such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Borough. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communications Facility were a separate Application.

I. Application Review

1. Pre-Application Meeting. Prior to making a formal application with the Borough for use of the Municipal Right-of-Way, all applicants are advised to meet voluntarily with the Borough Administrator, Borough Engineer and Consultant to review the scope of the Applicant's proposal.

2. All applications made under this Chapter shall be processed as consistent with the "shot clocks" set forth in the Federal Communications Commission Order titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barrier to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 170-84.

3. The Borough Administrator, municipal attorney and Municipal Engineer and Consultant shall review all applications for the placement of new Poles within the Municipal R.O.W. and the placement of Pole Mounted Antennas and Pole Mounted Cabinets within the Municipal R.O.W. and advise the Authority whether the application is complete and whether it meets the requirements of this Chapter.

4. Except as otherwise provided by applicable Laws, the Authority shall within thirty (30) days of receiving an Application, notify the Applicant if the Application is incomplete and identify the missing information. The Applicant may resubmit the completed Application within ten (10) days without additional charge, in which case the Authority shall have thirty (30) days from receipt of the resubmitted Application to verify the application is complete, notify the Applicant that the Application remains incomplete or, in the Borough's sole discretion, deny the Application.

5. The Authority shall review the Application and, if the Application conforms with applicable provisions of Chapter, the Authority shall issue the Permit, subject to the standard permit requirements published by the Borough.

6. The Authority shall make its final decision to approve or deny the Application within sixty (60) days for a collocation of a small wireless facility to an existing structure, and ninety (90) days to deploy a small wireless facility on a new structure, after the Application is complete (or deemed complete in the event the Borough does not notify the Applicant that the Application or resubmitted Application is incomplete). Review of an Application to deploy a facility other than a small wireless facility using a new structure shall be decided within 150 days.

7. Waiver. The Authority may waive any siting standard set forth in Chapter where the Applicant demonstrates that strict enforcement of said Standard:

- i. Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or

ii. Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(11); or

iii. Will violate any requirement set forth by the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barrier to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 170-84.

8. The Authority shall advise the Applicant in writing of its final decision.

J. Permitted Use.

Notwithstanding anything else in the Code of the Borough of Avon-by-the-Sea, the installation of antennas, small cells and other communication devices and associated equipment in the public municipal roadway either on existing or new poles are permitted and considered a permitted use if a Right-of-Way Use Agreement is entered into and if Right-of-Way Permits are obtained pursuant to this Chapter.

K. Governance of Deployments Outside of the Public Right-of-Way

This Chapter is intended to govern the installation, placement, maintenance, modification, upgrade and repair of Communications Facilities, including Small Wireless Facilities, in the Public Right-of-Way. The placement of telecommunications equipment outside of the Public Right-of-Way shall be governed by the applicable codes and ordinances of the Borough, including the provisions of section 113-29(E) Special Conditions for Wireless Telecommunications Towers and Antennas.

L. Preexisting Sites and Municipal Agreements.

1. Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of the provisions of this Chapter, whether or not a Right-of-Way Use Agreement exists or is in force and effect with regard to same, shall be required to comply with the provisions of this Chapter.

2. Any Right-of-Way Use Agreements entered into between the Borough and any Provider regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Chapter. To the extent the provisions of any existing such agreement conflict with this Chapter, said provisions, at the discretion of the Borough, shall be replaced and superseded by the applicable terms of this Chapter.

M. New Jersey One Call

In addition to compliance with the applicable provisions of this Chapter, prior to the start of any installation of Poles, Support Structures, Small Wireless Facilities or other Communications Facilities that requires excavation, Applicant shall contact New Jersey One Call at 811 at least three (3) full business days prior to the commencement of work.

N. Violations of this Chapter.

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

**Section 2.** If any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder of any portion thereof.

**Section 3.** All ordinances or parts of ordinance inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 4.** This Ordinance shall take effect upon final adoption and publication in accordance with Law.

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Edward Bonanno, Mayor

I, Thea Kratochvil, Acting Municipal Clerk of the Municipality of Avon-By-The-Sea do hereby attest that the foregoing ordinance was introduced at a regular meeting of the Governing Body of Avon-By-The-Sea held on the 9th day of August, 2021 and adopted at a regular meeting of the Governing Body of Avon-By-The-Sea held on the 23rd day of August, 2021.

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