

**TOWNSHIP OF MORRIS
MORRIS COUNTY, NEW JERSEY
ORDINANCE# 09-18**

AN ORDINANCE OF THE TOWNSHIP OF MORRIS, COUNTY OF MORRIS, NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 95 ENTITLED ZONING BY ADDING NEW ARTICLE XII ENTITLED "SMALL CELL EQUIPMENT, WIRELESS CABINETS AND WIRELESS POLES IN THE MUNICIPAL RIGHT OF WAY."

WHEREAS, the Township of Morris ("Township") is aware that certain technological developments have made access to its public Rights-of-Way desirable by certain telecommunications companies; and

WHEREAS, it is "axiomatic that municipal corporations are required to exercise ordinary care to maintain their streets and sidewalks...[n]or may a municipality in any way surrender or impair its control over the streets. McQuillan Mun. Corp. (3rd Ed), Section 30.73; and

WHEREAS, the Township acknowledges that its streets "are used for the ordinary purposes of travel and such other uses as customarily pertain there-to which, in recent years, are numerous and various. It thus follows that these public ways must be kept free from obstruction, nuisances, or unreasonable encroachments which destroy, in whole or in part, or materially impair, their use as public thoroughfares." Id.; and

WHEREAS, the Township has determined that its public 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 government's ability to "manage the public Rights-of-Way." 47 U.S.C. 253(c); and

WHEREAS, the Federal Telecommunications Act preserves local government's authority over the, "placement, construction and modification of personal wireless service facilities." 47 U.S.C. 332(c)(7)(A); and

WHEREAS, the Federal Telecommunications Act makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. 47 U.S.C. 332(c)(7)(B)(i)(II); and

WHEREAS, the Federal Telecommunications Act provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services; 47 U.S.C. 332(c)(7)(B)(i)(I); and

WHEREAS, recent developments in wireless technology, specifically the development of 5G, involve the placement of Small Cell Equipment and Wireless Cabinets in the Municipal Right-of-Way. Fitzgerald, Drew Wireless Companies to Offer 5G Plans at Mobile Forum, Wall Street Journal (February 28, 2018); and

WHEREAS, New Jersey municipalities may give consent for the placement of Small Cell Equipment and Wireless Cabinets on poles lawfully erected within the public Rights-of-Way pursuant to N.J.S.A. 48:3-19 and for the erection of Wireless Poles within the public Rights-of-Way pursuant to N.J.S.A. 48:17-10; and

WHEREAS, recent developments in wireless technologies benefit the residents of Morris Township; and

WHEREAS, pursuant to its statutory authority under Title 48, the Township wishes to streamline the adoption of these technologies by allowing for the issuance of supplemental licenses for the placement of Small Cell Equipment and Wireless Cabinets on Existing Poles; and

WHEREAS, the erection of Wireless Poles and Ground Level Wireless Cabinets raise significant safety, Right-of-Way management and aesthetic concerns; and

WHEREAS, Ground Level Wireless Cabinets trigger certain collocation requirements pursuant to the Middle Class Tax Relief and Jobs Creation Act of 2012; and

WHEREAS, the proliferation of Ground Level Wireless Cabinets raise concerns as to the public's interest in the Township's Rights-Of-Way related to the ability of the public to pass and repass said Rights-Of-Way and for the safety of drivers through the blocking of sight triangles; and

WHEREAS, the Federal Highway Administration has acknowledged this problem by stating, "[as] demand for the finite space in existing ROW increases, the difficulty and cost of adding new utility facilities and relocating existing utility facilities also increases. Just as significant is how utility service interruptions may add to public discontent with overall highway construction. It is therefore essential for planners, designers, and builders of street and highway projects to avoid unnecessary utility relocations..."Federal Highway Administration, Avoiding Utility Relocations, <https://www.fhwa.dot.gov/utilities/utilityrelo/2.cfm> (accessed March 7, 2018) ; and

WHEREAS, Wireless Poles and Ground Level Wireless Cabinets must be sited so as to protect the rights of the public to the Township's Rights-Of-Ways but also in a way that allows for wireless companies to provide wireless service to Township residents; and

WHEREAS, the Township has the power to zone "structures" pursuant to N.J.S.A. 40:55D-62; and

WHEREAS, the Municipal Land Use Law defines "structure" as "a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land;" and

WHEREAS, the Wireless Poles and Ground Level Cabinets are undoubtedly considered "structures" under this definition; and

WHEREAS, the Township has determined that it is necessary to set forth clear standards in relation to the siting of Small Cell Equipment, Wireless Cabinets and Wireless Poles within the Public Rights-of-Way for the benefit of its citizens and any utilities which use or will seek to make use of said Public Rights-of-Way.

FOR THE FOREGOING REASONS, it is hereby ordained by the Township Committee of the Township of Morris, in the County of Morris and State of New Jersey as follows:

Section 1 Chapter 95 "Zoning" is hereby amended and supplemented through the addition of Article XII "Small Cell Equipment and Wireless Poles in the Municipal Right-of-Way" as follows:

95-82 Definitions

A. As used in this Chapter, the following terms shall have the following meanings:

- i. "Anticipated Municipal Expenses" means the cost of processing an application to place Small Cell Equipment or Wireless Poles in the Municipal Right-of-Way including, but not limited to, all professional fees such as engineer and attorney costs.
- ii. "Applicant" means the person or entity seeking to place Small Cell Equipment, Wireless Cabinets or Wireless Poles within the Municipal Right-of-Way.
- iii. "Existing Pole" means a Wireless Pole, or pole owned by an Incumbent Local Exchange Carrier, Competitive Local Exchange Carrier, Electric Distribution Company or other company that is in lawful existence within the Municipal Right-of-Way. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- iv. "Ground Level Wireless Cabinet" means a Wireless Cabinet that is not attached to an Existing Pole and is touching the ground.
- v. "Master License Agreement" means an agreement setting forth the terms and conditions applicable to an applicants use of the Municipal Right-of-Way.
- vi. "Municipal Facilities" means any property, both real and personal, including physical installations in the Municipal Right-of-Way that is owned by the Township of Morris.
- vii. "Municipal Right-of-Way" means the surface of, and the space above or below, any public street, road, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Township as an easement or in fee simple ownership, or any other area that is determined by the Township to be a right-of-way in which the Township may allow the installation of Small Cell Equipment and Wireless Poles. This term may also include County Rights-of-Way where the County requires the approval of the Township pursuant to N.J.S.A. 27:16-6 for the use of same.
- viii. "Pole Mounted Small Cell Equipment" means Small Cell Equipment that is located on an Existing Pole. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- ix. "Pole Mounted Wireless Cabinet" means a Wireless Cabinet that is located on an Existing Pole. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- x. "Processing Fee" shall mean a one time non-refundable fee paid by an applicant to the Township per proposed Small Cell Equipment location or proposed Wireless Pole location to cover the administrative costs of the Township of Morris in processing said application. Fee shall be as established by Section 57-29 of the Revised General Ordinances of the Township of Morris entitled "Fees and administration of technical review deposits".

- xi. "Small Cell Equipment" means Wireless Facilities and Transmission Media, including femtocells, picocells and microcells, Outside Distributed Antenna Systems (ODAS) attached, mounted or installed on an Existing Pole or Wireless Pole in the public Rights-of-Way and used to provide Personal Communications Services. This term does not include Wireless Cabinets. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- xii. "Township Committee" means the Township Committee of the Township of Morris.
- xiii. "Township Clerk" means the person appointed to be the Township Clerk for the Township of Morris pursuant to N.J.S.A. 40A:9-133
- xiv. "Township Engineer" means the person appointed to be Township Engineer for the Township of Morris pursuant to N.J.S.A. 40A:9-140.
- xv. "Professional Survey" means a raised seal stamped survey completed by a duly licensed surveyor.
- xvi. "Wireless Cabinet" means a cabinet used to store electrical switching equipment for the servicing of Small Cell Equipment. However, a Wireless Cabinet is a distinct and separate structure from Small Cell Equipment. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- xvii. "Wireless Pole" means a column or post lawfully located in the Municipal Right-of-Way used solely to support Small Cell Equipment, Pole Mounted Wireless Cabinets and/or provide Personal Wireless Service. This term does not include a WT Compound, WT Equipment or WT Facilities as those terms are defined in Section 57-3 of the Revised General Ordinances of the Township of Morris.
- xviii. "Personal Wireless Service" means a type of 'commercial mobile radio service' (as that term is defined in 47 CFR 20.3) as listed at 47 CFR 20.9(a)(11) and as defined at 47 CFR 24.5, and provided by the use of 'personal wireless service facilities' (as such phrase is defined in section 704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 State 56 (1996), partially codified at 47 U.S.C. 332(c)(7)(C)(ii).
- xix. "Zone, Non-Residential" means the B-11, OL-5, OL-15, OL-40, I-21 and CEM zones as designated in § 95-5 of the Revised General Ordinances of the Township of Morris.
- xx. "Zone, Residential" means any zones permitting single-family, two-family, or multifamily residences, assisted-living residences, nursing homes, and/or residential health care facilities.

95-83 Applicability

- A. Except as otherwise provided herein, Small Cell Equipment, Wireless Cabinets and Wireless Poles that are proposed to be placed in the Municipal Right-of-Way are solely subject to the standards set forth in §95-82 through §95-87 and § 95-88 through § 95-90 of the Revised General Ordinances of the Township of Morris.

- B. Any person wishing to place Small Cell Equipment, Wireless Cabinets and/or Wireless Poles in the Municipal Right-of-Way must first apply for and enter into a Master License Agreement with the Township of Morris. Pursuant to N.J.S.A. 48:3-19, the placement of specific Small Cell Equipment and Wireless Cabinets onto Existing Poles shall only require the issuance of a supplemental license from the Township Committee based on recommendations by the Township Engineer. The erection of Wireless Poles or Ground Level Wireless Cabinets shall require application to the appropriate Township land use board as set forth herein.

95-84 Master License Agreement

- A. A Master License Agreement entered into pursuant to this Chapter shall include the following provisions:
- i. The Master License Agreement's term shall not exceed ten (10) years.
 - ii. The Master License Agreement shall impose reasonable insurance requirements.
 - iii. The Master License Agreement shall impose fees for unauthorized installations.
 - iv. The Master License Agreement shall require that all Small Cell Equipment, Wireless Cabinets and Wireless Poles be removed from the Township Right-of-Way at the end of said Master License Agreement's term.
 - v. The Master License Agreement shall include any other item that may reasonably be required by the Township Committee of the Township of Morris.
 - vi. The term of any site specific supplemental license shall expire upon the expiration of Applicant's Master License Agreement with the Township.
 - vii. The following conditions shall apply to the issuance of site specific supplemental licenses pursuant to any Master License Agreement entered into pursuant to this Section:
 1. Pole Mounted Small Cell Equipment and Pole Mounted Wireless Cabinets
 1. Only proposed Small Cell Equipment and proposed Pole Mounted Wireless Cabinets may be approved by way of supplemental license.
 2. The proposed Small Cell Equipment and Wireless Cabinet installation must not be in excess of the height of the Existing Pole, before the installation, plus six feet.
 3. The proposed Small Cell Equipment and Wireless Cabinet must be constructed, finished, painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in

compatibly with its background and so as minimize its visual impact on surrounding properties.

4. Proposal must include an engineer's certification verifying the structural integrity of the proposal.
 5. The volume the proposed Pole Mounted Small Cell Equipment and Pole Mounted Wireless Cabinet shall not exceed sixteen (16) cubic feet.
 6. No proposed Pole Mounted Small Cell Equipment or Pole Mounted Wireless Cabinet shall be placed within one hundred and fifty (150) feet of an existing Small Cell Equipment installation or Wireless Cabinet. This shall not preclude the collocation of such facilities on the same pole.
 7. Applicant must demonstrate that they have received all historic preservation approvals, as applicable.
 8. Applicant must demonstrate to the Township Engineer that any proposed Small Cell Equipment and proposed Pole Mounted Wireless Cabinet installation does not interfere with the public's use of the Municipal Right-of-Way and that said installation does not hinder any sight triangles or otherwise cause unsafe driving conditions for vehicles within the Municipal Right-of-Way.
- viii. Approval of Wireless Poles and Ground Level Wireless Cabinets may not be issued through a Master License Agreement. Said approvals must conform to the requirements of Section 95-86 of the Revised General Ordinances of the Township of Morris.

95-85 Master Agreement Application Process

A. Application Process.

- i. Complete Application. Every Applicant must provide the Township Clerk with a complete Pole Mounted Small Cell Equipment/Pole Mounted Wireless Cabinet Application using the Township's form for each location on which it proposes to place Small Cell Equipment and/or Wireless Cabinet that is located within the Municipal Right-of-Way. Application shall include the required Processing Fee and Escrow Deposit.
- ii. Survey. Every Applicant must provide the Township with a Survey prepared by a New Jersey licensed Professional Land Surveyor demonstrating that the Existing Pole on which it seeks to place Small Cell Equipment and/or a Wireless Cabinet is located within the Municipal Right-of-Way.

- iii. The Township Engineer shall review all applications and make a recommendation to the Township Committee as to whether a supplemental license should be issued.
 - iv. Any denial of a supplemental license must be in writing and provide the facts upon which such a denial is based.
- B. Pursuant to N.J.S.A. 54:30A-124, the Township shall recover reasonable fees for actual services incurred in the review of all applicants under this Section 95-85 of the Revised General Ordinances of the Township of Morris. Applicant shall make a deposit toward Anticipated Municipal Expenses which shall be placed in an escrow account. Escrow deposit shall be as established by Section 57-29 of the Revised General Ordinances of the Township of Morris entitled "Fees and administration of technical review deposits." If said escrow account contains insufficient funds to enable the Township to perform its review, the chief financial officer shall provide the Applicant a notice of insufficient balance. In order for review to continue, the Applicant shall, within fifteen days, post a deposit to the account in an amount to be mutually agreed upon. Additionally, every application for a supplemental license issued pursuant to Section 95-84 of the Revised General Ordinances of the Township of Morris shall include a non-refundable Processing Fee pursuant to Section 57-29 of the Revised General Ordinances of the Township of Morris.
- C. An Applicant, upon receiving a supplemental license for the placement of Pole Mounted Small Cell Equipment or Pole Mounted Wireless Cabinets in the Municipal Right-of-Way, may proceed in requesting all other necessary street opening permits and building permits and, upon receiving same, may proceed with construction. Applicants must comply with all other state and federal laws, rules and regulations along with any other applicable local ordinance.

95-86 Wireless Poles and Ground Level Wireless Cabinets – Zoning Standards

A. Ground Level Wireless Cabinets

- i. Ground Level Wireless Cabinets shall be a conditionally permitted use with Non-residential Zones as defined in Section 95-82 of the Revised General Ordinances of the Township of Morris, subject to the following conditions:
 - a. The proposed Ground Level Wireless Cabinet must be less than fourteen (14) cubic feet in volume.
 - b. The proposed Ground Level Wireless Cabinet shall be constructed, finished, painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as minimize its visual impact on surrounding properties.
 - c. The proposed Ground Level Wireless Cabinet shall not inhibit any existing sight triangles and allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
- ii. Ground Level Wireless Cabinets are prohibited within Residential Zones as defined in Section 95-82 of the Revised General Ordinances of the Township of Morris.

Wireless Poles

- iii. Wireless Poles are a prohibited use within Residential Zones as defined in Section 95-82 of the Revised General Ordinances of the Township of Morris.
 - iv. Wireless Poles shall be a conditionally permitted use within Non-residential Zones as defined in Section 95-82 of the Revised General Ordinances of the Township of Morris, subject to the following conditions:
 - a. The proposed Wireless Pole must be at least one hundred (100) feet from any Existing Pole.
 - b. The height of the proposed Wireless Pole cannot be any more than thirty five (35) feet from the ground to the top of the pole. Height does not include the placement of any proposed Pole Mounted Small Cell Equipment or Pole Mounted Wireless Cabinets.
 - c. The Proposed Wireless Pole shall be constructed, finished, painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as minimize its visual impact on surrounding properties.
 - d. The proposed Wireless Pole shall not inhibit any existing sight triangles and allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
- B. Any development approval received pursuant to Section 95-86 of the Revised General Ordinances of the Township of Morris shall have a duration not to exceed the term of an Applicant's Master License Agreement with the Township of Morris.

87. Wireless Poles and Ground Level Wireless Cabinets – Application Process

- A. Procedure for Ground Level Wireless Cabinets and Wireless Poles.
 - i. Applicants who wish to place Ground Level Wireless Cabinets and Wireless Poles must: a) enter into a Master License Agreement with the Township of Morris; and b) submit a development application to the applicable Township land use board.
- B. In making an application to the applicable Township land use board pursuant to Sections 95-86 and 96-87 of the Revised General Ordinances of the Township of Morris, the applicant shall submit all applicable application and escrow payments as required by ordinance.

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 or any portion thereof.

Section 3. A copy of this Ordinance shall be forwarded, after introduction, to the **Morris Township Planning Board for a Master Plan consistency review** in accordance with N.J.S.A. 40:55D-64.

Section 4. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall take effect upon (i) filing with the **Morris County Planning Board** in accordance with the Municipal Land Use Law; and (ii) adoption and publication in the manner required by New Jersey law.