CITY OF HOBOKEN
ORDINANCE NO.: B-289

AN ORDINANCE OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CITY CODE CHAPTER 168, ENTITLED "STREETS AND SIDEWALKS," BY ADDING ARTICLE XII ENTITLED "MUNICIPAL RIGHT-OF-WAY AND PUBLIC GROUNDS" (HAS BEEN AMENDED AND CARRIED TO THE 10/21/20 CCM)

WHEREAS, pursuant to N.J.S.A. 40:48-1 et seq., and N.J.S.A. 40:48-2 et seq., the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, not contrary to the laws of the state of New Jersey (the "State") or of the United States, as it may deem necessary and proper for the good of government, order, and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred by law; and

WHEREAS, the Mayor and Council (the "City Council") of the City of Hoboken (the "City"), County of Hudson (the "County") and State of New Jersey (the "State") are aware that certain technological developments have made access to the City's Municipal Rights-of-Way and Public Grounds desirable to certain telecommunications companies for the placement of small wireless facilities, including, but not limited to, antennas, equipment, cables, wires, conduits and other appurtenances attached to poles used to transmit, receive, distribute and provide personal wireless services and communication services ("Small Wireless Facilities") and cabinets; and

WHEREAS, the City has determined that its Municipal Rights-of-Way and Public Grounds constitute a valuable resource to its citizens, finite in nature, by permitting the public to pass freely over and across these Municipal Rights-of-Way and Public Grounds without unreasonable obstruction or interference, in a safe and secure manner; and

WHEREAS, the City recognizes that the use of its Municipal Rights-of-Way and Public Grounds must be managed carefully with the utmost consideration given to general welfare and best interest of its citizens; and

WHEREAS, the Federal Telecommunications Act (the "FTA") preserves local government’s ability to "manage the public Rights-of-Way..." 47 U.S.C. § 253(c); and

WHEREAS, the FTA 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 FTA makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. U.S.C. § 332(c)(7)(B)(i)(II); and
WHEREAS, the FTA provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services." U.S.C. § 332(c)(7)(B)(i)(I); and

WHEREAS, 4G and 5G wireless technology involves the placement of Small Wireless Facilities and cabinets in the Municipal Right-of-Way and Public Grounds; and

WHEREAS, New Jersey municipalities must give consent before a Small Wireless Facility can be placed on an existing pole pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 27:16-6; and

WHEREAS, New Jersey municipalities must give consent to the installation of a new pole within a Municipal Right-of-Way pursuant to N.J.S.A. 48:17-10; and

WHEREAS, the installation of Small Wireless Facilities and poles in the Municipal Rights-of-Way and Public Grounds raises significant aesthetic and safety concerns; and

WHEREAS, the installation of Small Wireless Facilities and poles in the Municipal Rights-of-Way and Public Grounds raises concerns related to sight triangles, minimum sidewalk width and dimensions, access to and from parked vehicles, and other safety related issues related to the use of roadways, public lands, and the ability of the public to pass over the Municipal Rights-of-Way and Public Grounds; and

WHEREAS, the Federal Highway Administration has acknowledged the problem concerning Municipal Rights-of-Way by stating "[as] demand for the finite space in existing Right-of-Way increases, the difficulty and cost of adding new utility facilities and relocating existing utility facilities also increases." Federal Highway Administration, Avoiding Utility Relocations, https://www.fhwa.dot.gov/utilities/utilityrelo/2.cfm (accessed February 4, 2020); and

WHEREAS, on September 26, 2018, the Federal Communications Commission (the "FCC") adopted a Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket 17-84 (the "FCC Order"); and

WHEREAS, the FCC Order provides that municipalities can impose aesthetic and location requirements on Small Wireless Facilities and related infrastructure including, but not limited to, poles, antennas, and cabinets, where said requirements are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployment; and, (3) are published in advance; and

WHEREAS, the City has determined to create a Right-of-Way permit system for all poles, cabinets and Small Wireless Facilities which are proposed to be placed in the Municipal Rights-of-Way and Public Grounds; and

WHEREAS, the Planning Board of the City (the "Planning Board") is empowered by N.J.S.A. 40:55D-25 to aid and assist the City Council in an advisory capacity; and

WHEREAS, the City has determined that it is necessary to set forth clear standards in relation to the siting of poles, cabinets and Small Wireless Facilities within the Municipal Rights-of-Way and Public Grounds for the benefit of its citizens, utilities and telecommunications
providers which use, or will seek to make use of, the Municipal Rights-of-Way and Public Grounds.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Hoboken, County of Hudson and the State of New Jersey, as follows (additions noted in [brackets]):

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. The City hereby amends, revises and supplements Chapter 168 of Municipal Code of the City (the “Code”), entitled “Streets and Sidewalks,” by adding Article XII, entitled “Municipal Right-of-Way and Public Grounds” to provide standards for siting poles, cabinets and Small Wireless Facilities in the Municipal Rights-of-Way or Public Grounds as follows:

§ 168-1201 Purpose and Intent

a) Purpose. The purpose of this Article is to establish uniform, nondiscriminatory standards for the placement, installation and construction of Small Wireless Facilities (as hereinafter defined) in the Municipal Right-of-Way (as hereinafter defined) or Public Grounds (as hereinafter defined) within the City’s jurisdiction in a manner that will provide public benefit and will preserve the integrity, public safety and aesthetics of the Municipal Right-of-Way and Public Grounds, and community character.

b) Intent. The intent of the standards established herein is to facilitate deployment of facilities that provide for the public benefits of advanced communications services, while providing for proper management of the Municipal Right-of-Way and Public Grounds in a manner that complies with all applicable State and federal laws and regulations. In fulfilling this intent, this Article is designed to prevent:

i. Interference with the use of streets, sidewalks, alleys, bikeways, and other public ways and places;
ii. Creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
iii. Interference with facilities and operation of facilities lawfully located in or near Municipal Rights-of-Way or Public Grounds;
iv. Environmental damage, including damage to trees; and
v. Degradation to the character of the areas in which Small Wireless Facilities are installed.

c) Conflicts. To the extent any previously adopted provisions of this Code conflict with this Article, this Article supersedes all such provisions.

§ 168-1202 Definitions

a) “Anticipated Municipal Expenses” means the cost of processing an Application including, but not limited to, all professional fees such as engineer and attorney costs incurred by the City.

b) “Applicant” means the person or entity seeking to place a Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way or Public Grounds that submits an Application, and the agents, employees, and contractors of such person or entity.
c) “Application” means either a New ROW Installation Application or an Existing ROW Installation Application, submitted by an Applicant to the City for purposes of procuring a Right-of-Way Permit.

d) “Cabinet” means a Pole mounted small box-like or rectangular structure used to facilitate utility or Personal Wireless Service.

e) “City Council” means the City Council of the City of Hoboken.

f) “City Clerk” means the person appointed to be the City Clerk for the City of Hoboken pursuant to N.J.S.A. 40A:9-133.

g) “City Engineer” means the person appointed to be City Engineer for the City of Hoboken pursuant to N.J.S.A. 40A:9-140 or its designee.

h) “Collocation” means to install or mount equipment, Cabinets or Small Wireless Facilities on, under, or within a pre-existing communications facility, Pole, Existing Pole, Cabinet, Existing Cabinet or other support structures in the Municipal Right-of-Way or Public Grounds.

i) “Existing Facility” means an Existing Small Cell Wireless Facility, Existing Cabinet, or Existing Pole that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

j) “Existing Cabinet” means a Cabinet that is in lawful existence within the Municipal Right-of-Way or Public Grounds, including ground mounted and at grade installations.

k) “Existing Pole” means a Pole that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

l) “Existing Small Cell Wireless Facility” means an Existing Small Cell Wireless Facility that is in lawful existence within the Municipal Right-of-Way or Public Grounds.

m) “Existing Provider” means the entity currently utilizing any Small Wireless Facility within the Municipal Right-of-Way or Public Grounds.

n) “Existing ROW Installation Application” means a formal written request in compliance with the requirements as established by the City for Right-of-Way Permit to construct or install a Small Wireless Facility on an Existing Facility within a Municipal Right-of-Way or Public Grounds submitted by an Applicant to the City Engineer in accordance with this Article.


p) “FCC” means the Federal Communications Commission.

q) “Municipal Right-of-Way” or “Right-of-Way” or “ROW” 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 City as an easement or in fee simple ownership, or any other area that is determined by the City to be a right-of-way in which the City may allow the installation of Small Wireless Facilities, Cabinets and
Poles. This term may also include County Rights-of-Way where the County requires the approval of the City pursuant to N.J.S.A. 27:16-6 for the use of same.

r) “New Infrastructure Installation” means any Proposed Pole.

s) “New ROW Installation Application” means a formal written request in compliance with the requirements as established by the City for a Right-of-Way Permit to construct or install a Pole or Cabinet in a Municipal Right-of-Way submitted by an Applicant to the City Engineer in accordance with this Article.

t) "Permittee” means an Applicant that has obtained a Right-of-Way Permit.

u) “Personal Wireless Service” means a type of ‘commercial mobile radio service’ (as that term is defined in 47 CFR 20.3), unlicensed wireless services (as that term is defined in 47 U.S.C. 332 (c)(7)(C)(ii)) and common carrier wireless exchange access services, and provided by the use of ‘personal wireless service facilities’ (as such phrase is defined in 47 U.S.C. 332(c)(7)(C)(ii)).

v) “Pole” means a long, slender, piece of wood, metal, fiberglass composite, or other materials, including, but not limited to, decorative streetlights, non-decorative streetlights and traffic signal structures.

w) “Preferred Location” is defined in §168-1207(b)(iii).

x) “Professional Survey” means a raised seal stamped survey completed by a duly licensed surveyor.

y) “Proposed Cabinet” means a Pole mounted Cabinet that is proposed to be placed within the Municipal Right-of-Way or Public Grounds.

z) “Proposed Pole” means a Pole that is proposed to be placed within the Municipal Right-of-Way or Public Grounds.

aa) “Public Grounds” means any lands, areas, buildings or installations owned by the City of Hoboken or any of its departments, agencies or commissions, and shall include, but not be limited to, the City Board of Education lands, areas, buildings or installations.

bb) “RF Emissions” means the radio frequency power transmitted from a Small Wireless Facility.

c) “ROW Installation Subcommittee” means a committee comprised of three (3) members of the City Council, the City Engineer, the City Business Administrator, one member from the Planning Board and one member from the Historic Preservation Commission who are responsible for reviewing all New ROW Installation Applications for compliance with the provisions of this Article and issuing a recommendation concerning the New ROW Installation Application to the Planning Board.

dd) “Right-of-Way Installation” means the Pole, Cabinet and/or Small Wireless Facility installed within the Municipal Right-of-Way or Public Grounds in accordance with a Right-of-Way Permit.
ee) “Right-of-Way Use Agreement” means an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way or Public Grounds.

ff) “Right-of-Way Permit” means the building permit issued by the City following approval from the City which sets forth that the Applicant is in compliance with the requirements of this Article.

gg) “Small Wireless Facility/ies” means antennas, equipment, cables, wires, conduits and other appurtenances attached to Poles or located within Cabinets used to transmit, receive, distribute and provide Personal Wireless Services and communication services and as further defined in the FCC Order.

hh) “State” means New Jersey.

ii) “Surrounding Streetscape” means existing Poles within the same Right-of-Way, which are located within five hundred (500) feet of the Proposed Pole.

jj) “Utilities Regulated by the Board of Public Utilities” means 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.

kk) “Utility Service” means electric, telephone or cable service.

ll) “Website” means the website developed, operated, maintained and updated by Permittees which provides information about any New Infrastructure Installation.

§ 168-1203 Applicability

a) Except as otherwise provided in this Article, Small Wireless Facilities, Cabinets and Poles that are proposed to be placed within the Municipal Right-of-Way or Public Grounds are solely subject to the standards set forth in §168-1201 through §168-1212 of the Municipal Code of the City of Hoboken.

b) Any person or entity wishing to place Small Wireless Facilities, Cabinets or Poles within the Municipal Right-of-Way or Public Grounds shall be subject to the standards and procedures set forth within this Article and shall be required to:

i. obtain a Right-of-Way Permit for the siting and installation of Small Wireless Facilities, Cabinets and Poles within the Municipal Right-of-Way or Public Grounds; and

ii. enter into a Right-of-Way Use Agreement with the City.


a) Right-of-Way Permit. No person or entity shall operate, construct, install, place, or replace any type of Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way or Public Grounds without first obtaining a Right-of-Way Permit pursuant to the provisions of this Article and executing a Right-of-Way Use Agreement with the City. A separate Right-of-Way Permit is required for each location within the Municipal Right-
of-Way or Public Grounds at which a Small Wireless Facility, Cabinet or Pole is to be installed. Each Small Wireless Facility, Cabinet or Pole for which a Right-of-Way Permit is issued must comply fully with:

i. All applicable provisions of this Article;

ii. All conditions imposed upon the issuance of the Right-of-Way Permit;

iii. All terms and obligations as set forth in the Right-of-Way Use Agreement with the City;

iv. All other applicable federal, State and City codes, laws and regulations pertaining to the installation, operation, and maintenance of the Small Wireless Facility, Cabinet or Pole.

b) Issuance of Right-of-Way Permit. A Right-of-Way Permit will be issued by the City building department upon:

i. Approval of an Application submitted by an Applicant pursuant to this Article;

ii. Applicant’s submission of proof of insurance as required by the Right-of-Way Use Agreement;

iii. Posting of financial security as required by the Right-of-Way Use Agreement;

iv. Applicant’s submission of an Original Certificate of Incorporation and/or Certificate of Good Standing from the Secretary of the State of New Jersey evidencing authorization for the Applicant to do business in the State.

v. Fulfillment of all other conditions established by the City as a pre-requisite to the issuance of the Right-of-Way Permit.

vi. Applicant’s submission of a certification, in a form approved by the City, that the proposed Small Wireless Facility, Cabinet or Pole complies with all applicable federal, State, and City requirements, including but not limited to regulations pertaining to:

A. Environmental matters;

B. Historic preservation;

C. Radio frequency emissions; and

D. The Americans with Disabilities Act.

c) Other Required Permits. Prior to commencing any work authorized under a Right-of-Way Permit pursuant to this Article, the Applicant must also obtain any and all other permits and licenses that are required by the City for carrying out the work, including but not limited to:

i. road opening permits;

ii. construction permits;
iii. excavation permits;
iv. obstruction permits; and
v. traffic control permits
vi. any other permits required under the laws and statutes of the State of New Jersey, the County Code/Ordinances of the County, and/or City Code/Ordinances of the City including, but not limited to, the Uniform Construction Code.

d) Permits to be displayed. A copy of all permits and licenses required by the City must be displayed at the work site at all times during the construction, placement, replacement, or installation of Small Wireless Facility, Cabinet or Pole. Failure to display copies of all permits required under this Article shall be a violation of § 168-1212 and shall be subject to the penalties set forth therein.

e) Current Violations as Grounds for Denial. The City may deny a Right-of-Way Permit sought by an Applicant who (i) is currently in violation of any of the provisions of this Article regarding other Small Wireless Facilities, Cabinets or Poles placed or installed by the Applicant subsequent to the effective date of this Article or (ii) is in violation of any Right-Of-Way Use Agreement executed by the City and the Applicant.

f) Effect of Right-of-Way Permit; Authority Granted; No Property Right or Other Interest Created.
   i. A Right-of-Way Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Article and the Right-of-Way Use Agreement.
   ii. A Right-of-Way Permit does not authorize the use of support structures owned by the City unless an agreement for the use of such support structures has been authorized by the City.
   iii. A Right-of-Way Permit does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Municipal Right-of-Way or Public Grounds.

g) Duration of Right-of-Way Permit. A Right-of-Way Permit issued under this section shall be valid for a period of six (6) months after issuance, provided that the six (6) month period shall be extended for up to an additional six (6) months upon written request of the Applicant made prior to the end of the initial six (6) month period if the failure to complete installation is delayed as a result of circumstances beyond the reasonable control of the Applicant.

h) Failure to obtain Right-of-Way Permit. It is a violation of this Article to construct, install, or place a Small Wireless Facility, Cabinet or Pole in a Municipal Right-of-Way or on Public Grounds without obtaining a Right-of-Way Permit as required herein. Each day any such communications facility or any components of any such facility remain in the Municipal Right-of-Way or on Public Grounds will be considered a separate violation, subject to the penalties provided in § 168-1212, until an Application meeting the requirements of this Article is submitted and approved by the City. In addition to any
penalties that may be imposed for violation of this Article, the violator will be subject to the following provisions:

i. Where construction, placement or installation of a Small Wireless Facility, Cabinet or Pole has been commenced without a Right-of-Way Permit, the work will be subject to issuance of a stop work order and the Application fee for such facility will be doubled. Additionally, the City may (a) require removal of the facility from the Municipal Right-of-Way or Public Grounds and restoration of the Municipal Right-of-Way or Public Grounds by the violator and (b) hold the violator liable for any additional costs the City incurs for inspection of the work and enforcement of this section.

i) Exceptions. Notwithstanding the foregoing, no Right-of-Way Permit is required for:

i. Relocations and modifications (a) performed at the City’s direction pursuant to § 168-1210 or (b) permitted by a Right-of-Way Use Agreement; or

ii. General maintenance and responses to outages, malfunctions, and other emergencies involving an Existing Facility, provided that:

A. The facility owner must provide notice of the work to be performed as required by the notice provisions of the Right-of-Way Use Agreement;

B. Any response involving excavations, construction work, or redirection of vehicular or pedestrian traffic must be coordinated with the City; and

C. Any increases to the physical dimensions or other permanent changes to the appearance of the Existing Facility beyond the scope of the Right-of-Way Use Agreement will require a new Right-of-Way Permit.

§ 168-1205 Right-of-Way Use Agreement Required;

a) Right-of-Way Use Agreement. No person shall operate, construct, place or install any type of Small Wireless Facility, Cabinet or Pole within the Municipal Right-of-Way or Public Grounds without first entering into a Right-of-Way Use Agreement with the City. The terms of the Right-of-Way Use Agreement shall include, but not be limited to:

i. A term as established in the Right-of-Way Use Agreement but not to exceed five (5) years, subject to automatic renewal for four (4) additional five (5) year terms pending termination as set forth in the Right-of-Way Use Agreement;

ii. Collocation requirements;

iii. Reasonable insurance requirements;

iv. Reasonable performance bond requirements;

v. Indemnification requirements;

vi. Fee schedule;
vii. Requirements regarding repair, maintenance and relocation of the equipment;

viii. A provision requiring that all Small Wireless Facilities, Cabinets or Poles be removed from the Municipal Right-of-Way or Public Grounds at the end of the Right-of-Way Use Agreement's term;

ix. A reference to the siting standards set forth in this Article;

x. Provision for public notice of installation of Small Wireless Facilities, Poles and Cabinets, including but not limited to, the development of a website and mailed notice of installation, as applicable;

xi. Provision regarding removal of installations due to a change in federal, State or local law;

xii. Any other items which may reasonably be required for the Applicant’s operation within the Municipal Right-of-Way or Public Grounds.

§ 168-1206 Reserved.


a) Right of Way Permit Required. No Small Wireless Facility, Pole, or Cabinet shall be operated, constructed, placed or installed in the Municipal Right-of-Way or on any Public Grounds without the issuance by the City of a Right-of-Way Permit in accordance in with this Article.

b) Siting Standards Applicable to All Small Wireless Facilities, Poles and Cabinets within the Municipal Right-of-Way or Public Grounds. All Small Wireless Facilities, Poles and Cabinets within the Municipal Right-of-Way or Public Grounds are subject to the following standards:

i. Each proposed, new, or replaced Wireless Facility, Pole or Cabinet within a Municipal Right-of-Way or Public Grounds must:

1. Be compatible in size, mass, and color to similar Small Wireless Facilities, Poles and Cabinets in the immediate area, be finished or painted and otherwise camouflaged in conformance with best available stealth technology methods, with a goal of blending in compatibly with its background and minimizing the physical and visual impact on the area and surrounding properties, all as approved by the City. Notwithstanding the foregoing, a new Small Wireless Facility, Pole or Cabinet must be designed using camouflaging techniques that make it as unobtrusive as possible if:

a) It is not possible or desirable to match the design and color of a new facility or support structure with the existing support structures in the immediate area; or
b) Existing support structures in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the City.

2. Allow adequate room for the public to pass and repass along and across the public portion of the Municipal Right-of-Way or Public Grounds.

3. Be in compliance with the FCC RF Emissions exposure guidelines and all applicable law.

4. Be designed by a qualified engineer licensed by the State of New Jersey, and must meet all applicable building and electrical code standards.

5. Be located and designed so as to avoid interference with maintenance activities within the Municipal Right-of-Way or Public Grounds such as:
   a) Grass mowing, brush collection, tree trimming, snow removal and landscaping maintenance;
   b) Trash collection;
   c) Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
   d) Maintenance of other facilities in the Municipal Right-of-Way or Public Grounds.

6. Be designed to prevent interference with public safety communications, traffic signal systems, or other government communications. If a potential problem is identified, the City may require Applicants to provide a technical evaluation to identify any potential interference and implement corrective solutions to resolve the problem.

ii. A Small Wireless Facility, Pole or Cabinet within a Municipal Right-of-Way or Public Grounds must not:

1. Obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within a Municipal Right-of-Way or Public Grounds, except for authorized temporary lane or sidewalk closures;

2. Obstruct the legal use of the Municipal Right-of-Way or Public Grounds by utility providers and other authorized Municipal Right-of-Way or Public Grounds users;

3. Inhibit any sight triangles;

4. Obstruct, block or interfere with traffic signal systems;

5. Result in a violation of the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); or
6. Violate other Municipal Right-of-Way or Public Grounds management provisions adopted by the City.


1. **Order of preference.** The following locations, in the order listed, are the Preferred Locations within the City for installation of Small Wireless Facilities, Poles, or Cabinets in Municipal Rights-of-Way or Public Grounds:

   a) Existing Facility

   b) Industrial areas as identified on the City Zoning Map as I-1, I-1(W) and I-2.

   c) Commercial areas as identified on the City Zoning Map as C-1 and C-3, except for Washington Street, Sinatra Drive and Sinatra Drive North.

2. **Non-preferred locations.** A Small Wireless Facility, Pole, or Cabinet may be permitted in a location other than a Preferred Location identified in this section if the Applicant provides evidence, as required and determined by the City Engineer, showing that:

   a) Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a non-preferred location; and

   b) The proposed facility will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area.

iv. **Collocation Preferred.** Collocation of Small Wireless Facilities and Cabinets is preferred over new support structures.

c) **Pole Specific 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 in the Surrounding Streetscape, whichever is shorter.

   ii. **Color and Diameter of Proposed Poles.** Proposed Poles must be no more than thirteen (13) inches in diameter with a surface that is powder-coated and brown or dark green color, or as otherwise set forth in the Right-of-Way Use Agreement.

   iii. **Material of Proposed Poles.** Proposed Poles must be made of a material as approved by the City Engineer and consistent with the requirements of the Right-of-Way Use Agreement.

   iv. **Distance from the curb line.** No Pole shall be farther than eighteen (18) inches from the curb line or nearest traffic lane.
v. Distance from Obstructions. Proposed Poles shall be a minimum of four (4) feet from any and all obstructions.

vi. Proposed Poles are prohibited:

   1. in areas where telecommunications facilities are underground.
   2. adjacent to any street that is twenty (20) feet or less in width, excluding additional lanes at intersections.

vii. No Pole shall be constructed in the Municipal Right-of-Way or Public Grounds unless it:

   1. is replacing an Existing Pole; or
   2. is approved pursuant to a land development application by the City’s Planning Board pursuant to a land use application; or
   3. is located in the Municipal Rights-of-Way located in a Preferred Location, unless as otherwise provided in this Article; and
   4. is two hundred (200) linear feet from any other Existing Pole or Proposed Pole along the same side of the street, with a maximum of one (1) Pole per block face; and
   5. complies with the requirements set forth in this Article and the Right-of-Way Use Agreement.

viii. All Proposed Poles shall be designed and constructed to accommodate maximum Collocation of Small Wireless Facilities.

d) Small Wireless Facility Specific Siting Standards.

i. Small Wireless Facilities are permitted on Poles, provided that each Small Wireless Facility:

   1. Does not exceed twenty-eight (28) cubic feet in volume; and
   2. The Pole does not exceed the lesser height of:
      a) the tallest Small Wireless Facility in the Municipal Right-of-Way or Public Grounds within three hundred (300) feet of the new Small Wireless Facility;
      b) Thirty-five (35) feet above ground level; or
      c) One hundred and ten percent (110%) of the height of a Small Wireless Facility in the nearest Surrounding Streetscapes.

   3. Does not extend more than fourteen (14) inches past the edge of the Pole. Such equipment must be at least sixteen (16) feet above ground level.
e) Cabinets must be Pole mounted. Ground mounted Cabinets or at grade installation of Cabinets is prohibited.

f) Collocation of Small Wireless Facilities.

i. Collocation of Small Wireless Facilities with non-municipal facilities. Collocation of Small Wireless Facilities with non-municipal facilities is preferred by the City.

ii. Collocation with City-owned Poles, Small Wireless Facilities, and Cabinets. A Small Wireless Facility may be attached to a City-owned Pole or support structure within a Municipal Right-of-Way or on Public Grounds only if the owner of the Small Wireless Facility has entered into a duly authorized Right-of-Way Use Agreement with the City establishing the terms and fees for the attachments in addition to the application fees and annual fees established in this Article. Upon approval of a Right-of-Way Use Agreement, and any other required agreement, by the City Council and issuance of a Right-of-Way Permit and all other applicable permits, an Applicant may Collocate a Small Wireless Facility on the following, in order of preference:

1. Non-decorative streetlights;
2. Non-decorative traffic signal structures; or
3. Other City-owned facilities.

iii. Collocation of municipal equipment on wireless facilities. The City may require a Right-of-Way Permit holder under this Article to allow placement of a streetlight, camera, and other equipment on a support structure owned by the Right-of-Way Permit holder if the structure can accommodate such equipment without interfering with the Right-of-Way Permit holder’s use of the structure. Unless otherwise agreed, the City will maintain ownership of all such streetlights, cameras, and other equipment and will be solely responsible for their installation, operation, and maintenance. The owner of a support structure on which City equipment has been placed may be eligible for a waiver or reduction in the fee required under § 168-1209 herein.

g) To the extent applicable, the standards established in this section shall remain in effect while a Small Wireless Facility, Cabinet or Pole remains in a Municipal Right-of-Way or on Public Grounds.

h) The City may require that an Applicant provide a certification from a licensed engineer attesting to the structural integrity of any Small Wireless Facility, Cabinet or Pole.

§ 168-1208 Application Process

a) Pre-application Meeting. Prior to making a formal Application to the City for use of the Municipal Right-of-Way or Public Grounds, all Applicants shall meet with the City Engineer to review the scope of the Applicant’s proposal which may include on-site review of Proposed Poles or Proposed Cabinets with the City Engineer.

b) The form of Application shall be provided by the City Engineer.
c) All Applications made under this Article shall be expedited so as to comply with the "shot clocks" set forth in the FCC Order as applicable.

d) Every Application made under this Article must include compliance reports certified by a qualified engineer or professional, as approved by the City, ensuring compliance of all Small Wireless Facilities with the FCC RF Emissions exposure guidelines. If the FCC adopts a superseding RF Emission standard, such new standard shall be controlling and become effective as directed in the FCC rulemaking. In such event, the Applicant shall, within forty-five (45) days of the superseding emission standard's effective date, submit to the City Engineer documentation of compliance with the superseding RF Emission standard. Failure to submit such documentation shall result in a declaration by the City Engineer that the equipment is no longer operative, and the removal provision stated in § 168-1209 shall apply.

e) The City Council shall, by resolution, authorize the execution of all Right-of-Way Use Agreements based upon the recommendations provided to it pursuant to subsections (f) and (g) below.

f) New ROW Installation Application; Required for Proposed Poles and Proposed Cabinets.

i. Applicants who wish to construct or install a Proposed Pole, or Proposed Cabinet within the Municipal Right-of-Way or Public Grounds must submit a New ROW Installation Application to the City Engineer.

ii. Applications shall include a stamped Professional Survey prepared by a New Jersey licensed land surveyor demonstrating that any Proposed Pole or Proposed Cabinet is located within the Municipal Right-of-Way or Public Grounds. Any Application which does not include such Professional Survey shall immediately be deemed incomplete.

iii. Applications shall document Collocation efforts for each Proposed Pole and demonstrate the need for New Infrastructure Installation.

iv. Upon receipt of a complete New ROW Installation Application from an Applicant, the City Engineer will forward the application to the ROW Installation Subcommittee for review for compliance with the requirements set forth in this Article. The ROW Installation Subcommittee shall review the New ROW Installation Application and advise the Planning Board of its recommendation concerning the proposed installation.

v. Upon receipt of a written recommendation from the ROW Installation Subcommittee, the Planning Board shall, pursuant to N.J.S.A. 40:55D-25(b)(3), review the New ROW Installation Application and approve or deny the Application. If the Planning Board denies such Application, it shall set forth the factual basis for such denial in writing, and the Applicant shall have thirty (30) days or longer as agreed to in writing from the City Engineer, from the issuance of said denial to cure such deficiencies before it will be required to submit a new Application. The Planning Board shall set forth the factual basis for approval of Applications in writing.
vi. Upon receipt of a written recommendation from the Planning Board, the Right-of-Way Use Agreement shall proceed to City Council for consideration.

vii. **Waiver.** The ROW Installation Subcommittee or Planning Board may waive any siting standard set forth in this Article where the Applicant demonstrates, as determined by the ROW Installation Subcommittee, that:

1. Strict enforcement of said siting standard will:
   a) Materially inhibit the Applicant’s ability to provide communication services; or
   b) Prohibit or have the effect of prohibiting Applicant from providing any interstate or intrastate telecommunications service, pursuant to 47 U.S.C. § 253(a); or
   c) Prohibit or have the effect of prohibiting Personal Wireless Service, pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(II).

2. Applicant will take measures to minimize any negative physical, visual, or other impact from deviating from the standards established in this Article.

**g) Existing ROW Installation Application: Required for Small Wireless Facilities.**

i. Applicants who wish to construct, install, or replace any Small Wireless Facility onto an Existing Facility within the Municipal Right-of-Way or Public Grounds must submit an Existing ROW Installation Application to the City Engineer.

ii. Upon receipt of a complete Existing ROW Installation Application, the City Engineer shall review the Application and approve or deny such Existing ROW Installation Application. If the City Engineer recommends a denial of such Application, they shall set forth the factual basis for such denial in writing, and the Applicant shall have thirty (30) days or longer, as agreed to in writing from the City Engineer, from the issuance of said denial, to cure such deficiencies before it will be required to submit a new or revised Application. The City Engineer shall set forth the factual basis for approval of Applications in writing.

iii. Upon approval of the Existing ROW Installation Application from the City Engineer, the Right-of-Way Use Agreement shall proceed to City Council for consideration.

iv. **Waiver.** The City Engineer may waive any siting standard set forth in this Section where the Applicant demonstrates that:

1. Strict enforcement of said siting standard will:
   a) Materially inhibit the Applicant’s ability to provide communication services; or
b) Prohibit or have the effect of prohibiting Applicant any interstate or intrastate telecommunications service, pursuant to 47 U.S.C. § 253(a); or

c) Prohibit or have the effect of prohibiting Personal Wireless Service, pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(I); or

2. Applicant will take measures to minimize any negative physical, visual, or other impact from deviating from the standards established in this Article.

§ 168-1209 Right-Of-Way Application Fees. Anticipated Municipal Expenses; Performance Bond Requirements; and Annual Reporting Requirements:

a) Every Application for a Right-of-Way Permit must include an application fee in the following amounts:

i. One (1) to five (5) Collocations on Existing Poles – five hundred dollars ($500.00) non-recurring fee.

ii. Each additional Collocation on an Existing Pole – one hundred dollars ($100.00) non-recurring fee.

iii. New Pole (i.e., not a Collocation) – one thousand dollars ($1,000) non-recurring fee.

b) Deposit toward Anticipated Municipal Expenses.

i. In addition to the Right-of-Way Permit application fee, the City Engineer may, in his or her own discretion, require the posting of an escrow in the amount of five thousand dollars ($5,000.00) towards Anticipated Municipal Expenses including, but not limited to, engineer, legal or other municipal fees related to review of an 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 City to conduct its review of the Right-of-Way Permit Application, the City’s Business Administrator shall provide the Applicant with notice of an insufficient balance. The Applicant shall deposit within ten (10) calendar days of such notice, such additional deposit as shall be agreed upon by the Applicant and the City’s Business Administrator to complete the City’s review.

iii. The City’s Business Administrator shall, upon request by the Applicant after a final decision has been made by the City Council in accordance with this Article regarding the Applicant’s Right-of-Way Permit Application, refund to the Applicant any unused balance from the Applicant’s escrow deposit.

c) Recurring Annual Fee.

i. All Applicants and Existing Providers shall pay a recurring annual Right-of-Way fee to the City in the amount of two hundred seventy ($270.00) per installation of each Small Wireless Facility.
ii. All Applicants and Existing Providers shall be required to notify the City Clerk, in writing, on a City-approved form, advising as to, but not limited to, the following information:

1. Whether or not the Small Wireless Facility is actively used; and
2. The name, address, telephone number and point of contact of the owner or lessee of the Small Wireless Facility.

d) Payment due dates shall be established in the Right-of-Way Use Agreement.

e) Late Payment. A ten percent (10%) late payment penalty shall be imposed against any Permittee who fails to pay any fee due under this Article within thirty (30) days of the date on which the fee is due.

f) Removal. When a Small Wireless Facility has been removed, no further fees will be due.

g) Corrections. The City or its duly authorized agents may audit the itemization of Small Wireless Facilities and payment calculations provided by an owner to verify their accuracy. If the City determines that the owner has paid less than the amount due, the City will bill the owner for the additional amount due, plus a ten percent (10%) late payment charge. At the City's request, the owner will provide all records necessary to verify the owner's calculations to the City or its agents.

h) Fee waivers and reductions. Any fee required under this Article may be waived or reduced for Small Wireless Facilities shared with the City, including Small Wireless Facilities used for placement of lights, cameras, or other equipment on Poles, Cabinets, or other support structures that are subject to this Article. A waiver or reduction in the fee otherwise due from the owner of the Small Wireless Facility, Pole, or Cabinet will be effective only if established in a written agreement between the owner and the City.

i) Performance Bond. In addition to the foregoing fees and deposits, the Applicant shall provide a performance bond that will cause the Poles, associated equipment, Cabinets, Small Wireless Facilities, and all other related improvements to the Municipal Right-of-Way or Public Grounds to be removed, at no cost to the City, when the same are no longer operative. The amount of the performance bond shall not be less than one hundred twenty percent (120%) of the cost (as determined by the City Engineer at the time of the Application) of such demolition, removal, and restoration of the site to a state required under applicable City Code/Ordinances.

j) Annual Reporting Requirements. Each owner of a Small Wireless Facility, Pole, or Cabinet within a Municipal Right-of-Way or on Public Grounds must file an annual report with the City Engineer.

i. The City Engineer shall establish the due date, reporting standards, and format for the annual report. The report must include:

1. The name, title, mailing address, telephone number, and e-mail address of the primary and secondary contact persons in matters related to the operation and maintenance of Small Wireless Facility, Pole, or Cabinet;
2. The status of all pending projects involving the Municipal Rights-of-Way or Public Grounds, including estimated timetables and completion dates;

3. As-built maps depicting the location of all Small Wireless Facilities, Poles, and Cabinets and appurtenances in the Municipal Rights-of-Way or Public Grounds;

4. Verification of compliance with FCC guidelines on RF Emissions;

5. Ongoing proof of compliance with insurance and financial security requirements; and

6. Such additional information as may be required by the City Engineer to fully assess the status of each facility and verify that the Right-of-Way is not occupied by equipment that is not permitted or no longer needed.

ii. Failure to submit an annual report shall be considered a violation of this Article and shall be subject to the penalties provided in § 168-1212.

§ 168-1210 Removal, relocation or modification of a Right-of-Way Installation.

a) **Notice.** Within sixty (60) days following written notice from the City, the Applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Right-of-Way Installation whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance or installation of any City improvement in or upon, or the operations of the City in or upon, the Municipal Right-of-Way or Public Grounds. The City shall apply the same standards to all utilities in the Municipal Right-of-Way or Public Grounds.

b) **Emergency removal or relocation of facilities.** The City retains the right and privilege to cut power to or move any Right-of-Way Installation, as the City may determine to be necessary, appropriate or useful in response to any public welfare emergency or safety emergency. If circumstances permit, the City shall notify the Applicant and provide the Applicant an opportunity to move its own facilities prior to cutting power to or removing the Right-of-Way Installation and in all cases shall notify the Applicant after cutting power to or removing the Right-of-Way Installation as promptly as reasonably possible. The City shall not be responsible for any damages to equipment or expenses incurred as a result of an interruption of power due to a public welfare emergency or safety emergency.

c) **Abandonment of Facilities.**

i. The Applicant is required to notify the City of abandonment of any Right-of-Way Installations at the time the decision to abandon is made; however, in no case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the City shall direct the Applicant to remove all or any portion of the Right-of-Way Installation if the City determines that such removal will be in the best interest of the public safety and public welfare. If the
Applicant fails to remove the abandoned facility within sixty (60) days after such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the Applicant, its successors and/or assigns.

ii. Any Right-of-Way Installations not used for its intended and approved purpose for a period of one (1) year shall be considered “abandoned” and the City Engineer, within sixty (60) days thereof, may direct the owner of the facility to remove all or any portion of the facility and complete such additional remedial measures as may be necessary for the integrity of the Right-of-Way or the public health, safety, or welfare. If the owner fails to take such actions within ninety (90) calendar days after the owner has been directed to do so, the City may remove the facility, complete all necessary remedial measures, and charge the owner for removal, storage, disposition, and Right-of-Way remediation costs. The owner must pay any such charges within thirty (30) calendar days of the date they are billed by the City. Alternatively, the City Engineer may require that an abandoned facility or components of an abandoned facility remain in place if removal would cause damage to public property or if the facility or components can be used by the City or serve a public purpose.

§ 168-1211 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 or as required under State Law.

b) The City’s consent to the use of County Roads, as required pursuant to N.J.S.A. 27:16-6, shall be subject to the standards and application process set forth in this Article.

c) State of Emergency.

i. Moratorium on City Review of Applications During State of Emergency. There shall be a moratorium on the City’s review of Applications when a “state of emergency” is declared by the Federal Government, State, or City pursuant to federal, State, or local law, and such declaration directly or indirectly relates to, impacts, concerns, or affects the City’s ability to review Applications, as determined by the City.

ii. Termination of the Moratorium. The moratorium on the City’s review of Applications during a “state of emergency” shall terminate upon the issuance of a proclamation, by the party declaring such “state of emergency,” stating that the “state of emergency” has been lifted. Notwithstanding the foregoing, the City may, in its sole discretion, dispense or ease its moratorium during a “state of emergency,” but only to the extent that it is reasonably able to process Applications during the “state of emergency.”

d) Notice.

i. Permittees shall develop, operate, maintain and update a Website providing information about any New Infrastructure Installation in accordance with the requirements of a Right-of-Way Use Agreement.
The Website shall identify the locations of the New Infrastructure Installations, the schedule for installation, hours of construction, impact on parking and pedestrian traffic, and the potential health and safety impact of the New Infrastructure Installations. The Website shall be approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

ii. Permittees shall provide, at their sole cost and expense, via regular mail at least seven (7) days prior to installation of any New Infrastructure Installation, written notification of any New Infrastructure Installation to all residents located within two hundred feet of each New Infrastructure Installation. The notice shall be approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, and shall include information about the New Infrastructure Installation, including but not limited to, the location of any New Infrastructure Installation, the schedule for installation, the impact on parking and pedestrian traffic, Website information and any additional information in accordance with the requirements of a Right-of-Way Use Agreement.

§ 168-1212 Violations and Penalties.

a) Any person or entity violating any of the provisions of this Article shall, upon conviction thereof before the Municipal Judge, be subject to a fine in any sum not less than two hundred fifty dollars ($250) nor exceeding two thousand dollars ($2,000) or to imprisonment for a period not exceeding thirty (30) days, or both, the amount of such fine and imprisonment within the limitation aforesaid to be determined in the discretion of the Municipal Judge.

b) Any person or entity convicted of violating this Article within one year of the date of the imposition of a fine for a previous violation of this Article shall be sentenced to an additional fine as a repeat offender. The additional fine imposed by the court upon a person or entity for a repeated offense shall not be less than two hundred fifty dollars ($250), nor shall it exceed the maximum fine fixed for a violation of this Article, but shall be calculated separately from the fine imposed for the violation of this Article, as provided for by N.J.S.A. 40:69A-29.]

Section 3. In the event 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 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 final adoption and publication in accordance with law.

Meeting Date: October 21, 2020
Approved as to Legal Form:

Brian Aloia, Esq. Corporation Counsel

Adopted by the Hoboken City Council
By a Vote of 7 Yeas to 0 Nays
On the 26 day of ____, 2020

James Farina, City Clerk

Vetoed by the Mayor for the following reasons:


-or-

Approved by the Mayor
On the 26 day of ____, 2020

Ravinder S. Bhalla, Mayor

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