

**BOROUGH OF BRADLEY BEACH
MONMOUTH COUNTY**

ORDINANCE 2025-7

**AN ORDINANCE AUGMENTING CHAPTER 398: “STREETS AND
SIDEWALKS” OF THE BOROUGH’S REVISED GENERAL
ORDINANCES TO CREATE NEW ARTICLE VI: “SMALL WIRELESS
FACILITIES” TO REGULATE CERTAIN CELLULAR WIRELESS
FACILITIES IN THE BOROUGH’S RIGHTS-OF-WAY.**

Mayor Gubitosi offered the following Ordinance and moved its introduction:

WHEREAS, the Borough of Bradley Beach (the “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 Communications Commission (the “FCC”) has 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 imposes a deadline for 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 Federal Telecommunications Act preserves local governments’ ability to manage the public Rights-of-Way on a competitively neutral and non-discriminatory basis under 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 FCC, in its recent order as interpreted by the court in City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020), 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, N.J. Admin. Code § 7:7-16.10 provides that new coastal development must be visually compatible with its surroundings including existing scenic resources, site design, and size, and must contain design elements which enhance public access to the waterfront; and

WHEREAS, the Borough has a specific obligation to its residents and visitors to protect its beachfront, related vistas and the passive recreational opportunities it affords to both; and

WHEREAS, the Borough's beachfront and adjacent areas are part of the Coastal Zone designated the New Jersey Coastal Area Facility Review Act and other laws that recognize and regulate such areas as a highly unique and valuable resource; 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 Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. Chapter 398: "Streets and Sidewalks" of the Revised General Ordinances of the Borough of Bradley Beach is hereby supplemented with *new* Article VI: "Small Wireless Facilities" as follows:

CHAPTER 398: STREETS AND SIDEWALKS

* * *

ARTICLE VI SMALL WIRELESS FACILITIES.

§ 398-40 Definitions.

ADMINISTRATIVE REVIEW

Ministerial review of an application by the Designee and Borough Engineer, as preferred by the Borough, to determine whether the issuance of a permit is in conformity with the applicable provisions of this chapter.

ANTICIPATED MUNICIPAL EXPENSES

Means the cost of processing an application for a Right of-Way Permit including, but not limited to, all professional fees such as engineer and attorney costs to the Borough.

BOROUGH COUNCIL

Shall mean the Borough Council of the Borough of Bradley Beach.

CABINET

Shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-Way,

ELECTRIC DISTRIBUTION SYSTEM

Shall mean the part of the electric system, after the transmission system that is dedicated to delivering electric energy to an end user.

EXISTING POLE

Shall mean a pole that is in lawful existence within the Municipal Right of-Way.

GROUND LEVEL CABINETS

Shall mean a Cabinet that is not attached to an existing pole and is touching the ground.

MUNICIPAL RIGHT-OF-WAY

Shall mean the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Borough as an easement or in fee simple ownership. This term includes rights-of-way held by Monmouth County where the Borough's approval is required for the use of same pursuant to N.J.S.A, 27:16-6.

POLE

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.

POLE MOUNTED ANTENNA

Shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells, and outside distributed antenna systems.

POLE MOUNTED CABINET

Shall mean a Cabinet that is proposed to be placed on an Existing or Proposed Pole.

PROPOSED POLE

Shall mean a Pole that is proposed to be placed in the Municipal Right of-Way.

REPLACE OR REPLACEMENT

Shall mean, 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 to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

RIGHT-OF-WAY AGREEMENT

Shall mean an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.

RIGHT-OF-WAY PERMIT

Shall mean an approval from the Borough setting forth the Utility's compliance with the requirements of this Chapter.

SMALL WIRELESS FACILITY

Shall mean 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

Shall mean 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.

SURROUNDING STREETSCAPE

Shall mean Existing Poles within the same right-of-way which are located within 500 feet of the Proposed Pole.

TOWER

Any structure in the public right-of-way built for the sole or primary purpose of supporting a wireless facility. A tower does not include a pole or support structure.

UTILITIES

Shall mean companies subject to regulation by the New Jersey Board of Public Utilities.

UTILITY SERVICE

Shall mean electric, telephone, or cable service.

WIRELESS FACILITY

Shall mean 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.

§ 398-41 Access to Public Right of Way.

Prior to obtaining a permit and 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 Utility Person shall enter into a Right of Way Use Agreement with the expressly authorizing use of the Public Right of Way for the Communications Facility or Pole proposed to be installed.

- A. The term of the R.O.W. Use Agreement shall not exceed 15 (fifteen) years.
- B. The R.O.W. Use Agreement authorizes the Utility's non-exclusive use of the Public R.O.W. for the sole purpose of installing, maintaining and operating Small Wireless 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 Utility 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.
- C. The Utility 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.
- D. The Utility 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:
 - (1) Insurance. The Utility 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 Utility 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 Utility. Prior to the commencement of any work pursuant to this Ordinance the Utility 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 Utility 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 Utility or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance. Utility shall notify the Designee within fifteen (15) days of receipt of any claim or demand of Utility 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. Utility shall provide Borough with renewal insurance.

- (2) Indemnification. Utility, 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 Utility'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 Utility'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 regarding any action at law or equity pursuant to this section.

§ 398-42 Right of Way Permit.

- A. *Pre-Application Meetings.* Prior to making a formal application and after entering into the ROW Agreement pursuant to Section 398-41 with the Borough for use of the Municipal Right-of-Way, all utilities must meet with the Zoning Officer to review the scope of the Utility's proposal. Following said meeting, the Zoning Officer may require the Utility to present the plan to the Borough Planning Board.
- B. Prior to approval of any application, the Borough may in its discretion require the Utility to hold a public meeting or open house and provide notice of same by regular mail to all property owners identified by the Borough Engineer as requiring notice.
- C. 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 Borough.

- D. The Utility shall not locate or maintain its Communications Facilities, Small Wireless Facilities, Support Structure or Poles 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.
- E. The permitting process set forth herein may be revised, supplemented, or otherwise amended or replaced by resolution or amendment to this Ordinance of Borough Council at any time regardless of a pending permit application.
- F. 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 formulated and regularly reexamined by the Borough Engineer.

§ 398-43 Location and Siting.

- A. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit.
- B. *Height.* No Pole shall be taller than thirty-five (35) feet or 110% of the height of Poles in the Surrounding Streetscape, whichever is higher. Total height includes any antenna or other attachment to the pole.
- C. *Distance from the curb line.* No pole shall be farther than eighteen (18) inches from the curb line.
- D. *Use of Existing Poles.*
 - (1) A Utility applying for a permit to use the Borough Right-of-Way to install facilities as defined within this Article must first provide to the Borough a complete list or inventory of existing poles within the Borough that the carrier will or may use to install such facilities.
 - (2) Such inventory shall be viewed and inspected by the Borough within 30 days of receipt and the carrier shall be notified as to whether the designated poles are satisfactory. If any poles are rejected, the Borough shall notify the carrier of the pole(s) rejected and reasons for such rejection.
 - (3) Once the final list of agreed upon poles is complete, the list shall be submitted to Borough Council for approval by Resolution.
 - (4) Such approval shall be valid for five years from the date of approval. During that period, the carrier may, at any time, make use of the pre-approved poles by filing

an application for a permit with the Zoning Officer. The Zoning Officer shall issue a Permit with any other necessary permits to follow in due course.

- E. *Use of new or replacement poles.* Once a Utility concludes, with the Borough's consent, that an existing pole or poles cannot be utilized to install facilities under this Chapter, the Utility may propose use of a replacement or additional pole within the Right-of-Way.
- F. *Location, Safety and Aesthetics.* No new pole shall be erected in the Right-of-Way unless it:
 - (1) Is replacing an Existing Pole;
 - (2) Has been reviewed by the Borough's Planning Board;
 - (3) At the option of the Borough, is a Smart Pole, the design of which shall be subject to administrative review and approval by the Borough;
 - (4) Is located within the Municipal Right-of-Way;
 - (5) Is at least one thousand five hundred (1500) linear feet from any other Existing Pole or Proposed Pole, which is used to support a Small Wireless Facility;
 - (6) Does not inhibit any existing sight triangles;
 - (7) Allows adequate room for the public to pass and re-pass across the Right-of-Way;
 - (8) Is finished and/or painted so as to blend in compatibly with it's background and so as to minimize its visual impact on surrounding properties.
- G. Each Smart Pole must accommodate at least three (3) carriers per Small Wireless Facility deployment.
- H. *Beachfront Facilities.*
 - (1) Erecting New Poles and similar facilities in the Municipal Right-of-Way raises significant aesthetic and safety concerns and those concerns are especially pronounced along the beachfront as specifically regulated by Chapter 123 of the Borough Code; and
 - (2) The Borough has a specific obligation to its residents and visitors to protect its unique beachfront, related vistas and the highly unique passive recreational opportunities it affords to both; and
 - (3) The Borough's beachfront, boardwalk and adjacent areas are part of the Coastal Zone designated the New Jersey Coastal Area Facility Review Act and other laws,

as well as general statements of public policy that recognize and regulate such areas as a highly unique and valuable resource; and

- (4) Local governments may regulate small wireless facilities to seek “traditional zoning objectives of preventing deployments that are unsightly or out of neighborhood character.” City of Portland v. United States, 969 F.3d 1020, 1042 (9th Cir. 2020).
 - (5) No Poles, Cabinets or similar facilities may be placed within 150 feet of the beach, any dunes, mean high water line (as defined by the Coastal Area Facility Review Act. See N.J. Admin. Code § 7:7-2.2.), or Ocean Avenue.
 - (6) No Poles, Cabinets or similar facilities may be placed upon or along the parklands or Public R.O.W. surrounding Sylvan Lake, including, but not limited to Evergreen Avenue and Bradley Boulevard from Ocean Avenue to Main Street, nor may any Poles, Cabinets or similar facilities be placed upon or along the parklands or Public R.O.W. surrounding Fletcher Lake, including, but not limited to Lake Terrace from Ocean Avenue to Madison Avenue.
 - (7) Should a CAFRA permit be required, the Utility must obtain a CAFRA permit or establish that same is not required.
- I. Any claim by a Utility of technical incompatibility, inability to use existing structure, or inability to collocate need to be proven by the Utility, not disproved by Borough. Validity of said claims by the Utility is reserved within the sole discretion of Borough.
- J. The Borough may require that any new poles installed by the Utility be Smart Poles.
- K. Pole Mounted Cabinets are permitted on Existing Poles, provided that each Cabinet:
- (1) Does not exceed sixteen (16) cubic feet; and
 - (2) Is finished and/or painted and otherwise camouflaged, in conformance with the best available stealth technology methods, to blend in compatibly with its background and to minimize its visual impact on surrounding properties; and
 - (3) Does not inhibit sight triangles; and
 - (4) Allows adequate room for the public to pass across the municipal right-of-way.
- L. Pole Mounted Antennas are permitted on Existing Poles, provided that each Pole Mounted Antenna:
- (1) Does not exceed three (3) cubic feet; and

- (2) Is finished and/or painted and otherwise camouflaged, in conformance with the best available stealth technology methods, to blend in compatibly with its background and to minimize its visual impact on surrounding properties; and
 - (3) Does not inhibit sight triangles; and
 - (4) Allows adequate room for the public to pass across the municipal right-of-way.
- M. The Utility must provide a certification from a licensed structural engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.
- N. 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 sixteen (16) cubic feet in volume.
- O. The Utility shall upon completion of construction provide the Borough with as-built drawings and a map showing the location of the facility and equipment.
- P. *Fewest Possible New Poles.* The Utility 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 required coverage and capacity.

§ 398-44 Restoration Requirements, Removal, Relocation, and Abandonment.

- A. The Utility, 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 Utility's Communications Facilities, Poles, or work in or adjacent to the Public R.O.W.
- B. If the Utility fails to timely restore, repair, or replace the Public R.O.W. as required in this subsection, the Borough or its contractor may do so and the Utility shall pay the Borough's costs and expenses in completing the restoration, repair or replacement.
- C. Within 90 days following written notice from the Borough, the Utility 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 Utility shall be responsible to the Borough for any damages or penalties it may incur because of the Utility'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.

- D. 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 Utility and give the Utility 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 Utility 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 Utility to the extent practicable under the circumstances.
- E. A Utility 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 Utility shall remove its Communications Facility, Pole, or Support Structure at the Utility'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 Utility 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 Utility shall remain liable for annual R.O.W. occupancy fee for balance of term.
- F. If the Utility 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 Utility shall pay all costs and expenses related to such work, including any delay damages or other damages the Borough incurs arising from the delay.

§ 398-45 Fees, Charges, and Applications.

- A. Every Right-of-Way Permit application must include a Right-of-Way Permit Fee in the following amounts:
 - (1) For applications that do not include the installation of any new structures within a Public Right-of-Way, the application fee shall be \$500 for up to five Communications Facilities with an additional \$100 for each Communications Facility beyond five.
 - (2) For applications that include the installation of a new structure within a Public Right-of-Way, the application shall be \$1,000 for up to five Communications Facilities with an additional \$100 for each Communications Facility beyond five.
 - (3) In addition to the Right-of-Way Permit Fee, the Zoning Officer may, in his or her own discretion, require the posting of a two thousand five hundred-dollar (\$2,500)

Deposit towards Anticipated Municipal Expenses related to an application made pursuant to this Chapter. The Utility's Deposit towards Anticipated Municipal Expenses shall be placed in an escrow account.

- (4) The Deposit shall be held in escrow to be billed against actual incurred costs. Any expenses above the escrow shall be invoiced to the Utility directly and shall be paid by the Utility prior to the issuance of any Permit.
- (5) The Chief Financial Officer shall, upon request by the Utility after a final decision has been made by the Borough Commission regarding his or her pending Right-of-Way Permit application, refund any unused balance from the Utility's Deposit towards Anticipated Municipal Expenses.
- (6) The Annual ROW Occupancy Rate shall be \$350 per year per Small Wireless Facility 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 the Utility.
- (7) *Other Fees.* The Utility 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 Utility 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.

B. *Permit Required.* Unless expressly authorized in this Chapter or in writing by the Borough, 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 Utility or its duly authorized representative may work in the Public R.O.W. prior to obtaining a Permit, provided that the Utility 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.

C. All applications made under this section shall be expedited to comply 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 Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 17-84.

- D. The Application shall be made by the Utility or its representative and shall contain the following:
- (1) A description of the proposed work and the purposes and intent of the proposed Communications Facility, Pole, Support Structure or Small Wireless Facility (as applicable) sufficient to demonstrate compliance with this Article.
 - (2) 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.
 - (3) Detailed construction drawings of the proposed Communications Facility, Pole, Support Structure or Small 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.
 - (4) 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.
 - (5) For any new aboveground facilities, accurate visual depictions or representations.
 - (6) The Utility shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Utility shall further certify that they will encourage, manage, and coordinate the location and placement of any interested carrier's equipment on the structure.
 - (7) The application and permitting processes set forth herein may be revised, supplemented, or otherwise amended or replaced by resolution of the Borough.
- E. Every application for a Proposed Pole made pursuant to this Chapter must include a stamped survey prepared by a New Jersey licensed surveyor demonstrating that any such Proposed Pole is located within the Municipal Right-of-Way. Any such application which does not include such a survey shall immediately be deemed incomplete.
- F. *Material Changes.* Unless otherwise agreed to in writing by the Borough, any material changes to an Application, as determined by the Borough 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.
- G. *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 Utility (made prior to the end of the initial 365-day period) if the failure to complete construction is because of circumstances beyond the reasonable control of the Utility.

- H. *Batch Permit.* A Utility may simultaneously submit no more than five (5) 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 Utility files a consolidated application, the Utility shall pay the application fee calculated as though each Communications Facility were a separate Application.
- I. *Ordinary Maintenance and Repair.* A Permit shall not be required for Ordinary Maintenance and Repair. The Utility 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 Borough reserves the right to inspect the Utility's Small Wireless Facilities at any time to determine if the existing configuration matches the configuration contained in the most recently issued Permit, and the applicable Right-of-Way Use Agreement. The Utility shall bear costs for said inspections.
- J. 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 the Utility shall be in violation of this Chapter. The Utility 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.

§ 398-46 Third Party Review, Preexisting Sites and Municipal Agreements.

- A. Telecommunications carriers use various methodologies and analysis tools, including geographically based software, to determine the specific technical parameters of facilities, such as expected coverage area, antenna configuration and topographic constraints that affect signal paths. In certain instances, there may be a need for expert review by a third party of the technical data submitted by the Utility. The Borough may require such a technical review to be paid for by the Utility for a telecommunications facility.
- B. The selection of the third-party expert may be by mutual agreement between the Utility and the Borough or at the discretion of the Borough, with a provision for the Utility and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to be a site-specific review of technical aspects of the facilities and not a subjective review of the site selection.
- C. Based on the results of the third-party review, the Borough may require changes to the application for the facility that comply with the recommendation of the expert.

- D. Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of this Article, whether a Right-of-Way Use Agreement exists or is in force and effect regarding same, shall be required to comply with the provisions of this Article.
- E. Any Right-of-Way Use Agreements entered between the Borough and any Utility regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Article. To the extent the provisions of any existing such agreement conflict with this Article, said provisions, at the discretion of the Borough, shall be replaced and superseded by the applicable terms of this Article.

SECTION 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 4. This Ordinance shall take effect upon adoption and publication in accordance with the laws of the State of New Jersey.

SO ORDAINED as aforesaid.

ERICA KOSTYZ, RMC, CMR
Municipal Clerk

ALAN GUBITOSI
Mayor

Introduced: January 21, 2025

Date of Hearing and Adoption: February 4, 2025