

ORDINANCE No. 2022-5

AN ORDINANCE OF COLTS NECK TOWNSHIP IN THE COUNTY OF MONMOUTH AND THE STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING SECTION 46.5 ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS" IN ARTICLE VI, CHAPTER 102 OF THE CODE OF COLTS NECK TOWNSHIP

WHEREAS; on April 23, 1997 the Colts Neck Township Committee amended in its entirety Chapter 102, Development Regulations of the Code of Colts Neck Township; and

WHEREAS, Colts Neck Township is continuously and closely involved in planning and development process in the Township, and

WHEREAS, one of the purposes of planning is to review the Township's policies and Development Regulations based on best available information and past experiences and to adopt regulations to guide the use of lands in a manner that promotes the public good and general public welfare, and

WHEREAS, Colts Neck Township (the "Township") is aware that telecommunications technology is evolving at a rapid pace, and that certain technological developments have made access to, among other things, Public Rights-of-Way desirable by certain telecommunications companies; and

WHEREAS, Township property, including public rights-of-way, such as they are or may be, constitutes a valuable resource, finite in nature, and which exists as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and

WHEREAS, the Federal Telecommunications Act preserves local government's ability to "manage the public right-of-way" on a competitively neutral and non-discriminatory basis. 47 U.S.C. §253(c); and

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

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

WHEREAS, the Township has determined that it is necessary to implement clear and uniform procedures in relation to the siting of Telecommunications Facilities on Township, County of Monmouth and State of New Jersey owned property, including Public Rights-of-Way, for the benefit of its citizens and any utilities which use or will seek to use Township, County or State owned property; and

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

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

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Colts Neck, County of Monmouth, State of New Jersey as follows: (additions to text indicated by underline; deletions to text indicated by ~~strikeout~~).

SECTION I: That Section 102-46.5 Wireless Telecommunication Towers and antennas be amended and supplemented in the following parts only to add new subsection F Small Cell Facilities and Wireless Poles in Public Right-of-Ways as follows:

§102-46.5 Wireless telecommunication towers and antenna

F Small Cell Facilities and Wireless Poles in Public Right-of-Way

(1.) Purpose.

(a.). The purpose and intent of this section is to:

- [1.] Establish a local policy concerning small cell antennas and equipment and wireless poles in public right-of-ways.
- [2.] Conserve the limited, physical capacity of the public right-of-way's held in public trust by the Township and the County.
- [3.] Assure that any and all telecommunications carriers providing telecommunications services in the Township through small cell antennas and equipment and wireless poles comply with the laws, rules and regulation of the Township.
- [4.] Assure that the Township can continue to fairly and responsibly protect the public health, safety and welfare.
- [5.] Enable the Township to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

(2.) Definitions. As used in this chapter, the following terms shall have the following meanings:

ALTERNATIVE TOWER FACILITY – An existing or proposed structure that is compatible with the natural setting and surrounding structures and that camouflages or conceals the presence of the antennas and can be used to house or mount a personal wireless telecommunication service antenna. Examples include manmade trees, clock towers, bell steeples, light poles, silos, existing utility poles, existing utility transmission towers and other similar alternative designed structures.

ANTICIPATED MUNICIPAL EXPENSES – The cost of processing an application to place small cell equipment or wireless poles in the public right-of-way including, but not limited to, all professional fees such as engineer and attorney costs.

APPLICANT – The person or entity seeking to place small cell equipment or wireless poles within the public right-of-way.

COLOCATION – The use of a common wireless telecommunications tower or a common structure, by two or more wireless license holders or unlicensed holders nevertheless regulated by the Federal Communications Commission or by one wireless license holder for more than one type of communications technology and/or the placement of a wireless telecommunication tower on a structure owned or operated by a utility or other public entity.

EXISTING POLE – A wireless pole, or pole owned by an incumbent local exchange carrier, competitive local exchange carrier, electric distribution company or other company that is in lawful existence within the public right-of-way. It shall not include an antenna, monopole or preexisting towers and preexisting antennas.

MUNICIPAL FACILITIES – Any property, both real and personal, including physical installations in the public right-of-way that is owned by the Township.

PERSONAL WIRELESS SERVICE – A type of “commercial mobile radio service” (as that term is defined in 47 CFR 20.3) as listed at 47 CFR 20.9(a)(11) and as defined at 47 CFR 24.5 and provided by the use of “personal wireless service facilities” [as such phrase is defined in section 704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56 (1996), partially codified at 47 U.S.C. §332(c)(7)(C)(ii)].

PROFESSIONAL SURVEY – A raised-seal-stamped survey completed by a duly licensed surveyor.

PUBLIC RIGHT-OF-WAY – The surface of, and the space above, any public street, road, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive and the like, held by the Township, County or State as an easement or in fee simple ownership, or any other area that is determined by the Township, County or State to be a right-of-way in which the Township may allow the installation of small cell equipment and wireless poles or other telecommunications facilities.

SMALL CELL EQUIPMENT AND SMALL CELL FACILITY – any of the following that are attached, mounted or installed on an existing pole or wireless pole in the public rights-of-way and used to provide personal communications services:

- (a.) Wireless facilities and transmission media, including femtocells, picocells and microcells;
- (b.) Outside distributed antenna systems (ODAS);
- (c.) A personal wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended as of August 6, 2014; or
- (d.) A wireless service facility that meets both of the following qualifications:
 - [1.] Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
 - [2.] Primary equipment enclosures are not larger than 20 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume, electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

SMALL CELL NETWORK – A collection of interrelated small cell facilities designed to deliver wireless service.

TELECOMMUNICATIONS – The transmission by wire, radio, optical or any electromagnetic system, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS CARRIER – Any provider of telecommunications services.

TELECOMMUNICATIONS FACILITY – Any structure or device used for the purpose of providing, supporting, enabling or otherwise facilitating telecommunications, including, but not limited to, small cell equipment and wireless poles, as defined herein.

TELECOMMUNICATION SERVICE(S) – The offering of telecommunications to the public, regardless of the telecommunications facilities used.

WIRELESS POLE – A column or post lawfully located in the public right-of-way used solely to support small cell equipment and/or provide Personal Wireless Service.

Additionally, definitions of terms appearing in the following state and federal laws and regulations shall be adopted by reference.

- a. All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.
- b. All definitions of the words, terms and phrases that are set forth in the portion of the Middle-Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 USC §455, are incorporated herein and are made a part hereof.
- c. All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law N.J.S.A. 40:55D-1 *et. seq.*, are incorporated herein and are made apart hereof.
- d. All definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 C.F.R. §1.6002, as amended, are incorporated herein and are made apart hereof.

(3.). Applicability.

- (a.) Any telecommunications carrier wishing to place small cell equipment and/or wireless poles in a Township right-of-way must first enter into a license agreement with the Township. The placement of specific small cell equipment onto existing poles or the erection of new wireless poles shall require the issuance of a supplemental license from the Township Committee based on recommendations by the Township Engineer and/or Township Planner.
- (b.) New small cell antennas and small cell equipment installations in Township right-of-way's or property require site plan approval, except for collocation applications meeting the requirements of 102-46.5E and 102-46.5F4(a). A Planning Board or Zoning Board application for the construction, installation or location for telecommunications facilities in a Township right-of-way shall not be deemed complete until a license under this chapter is granted by the Township. The applicant shall provide at least sixty (60) days notice to the Zoning and Planning Board prior to making an application for the construction, installation or location for telecommunications in a County or State right-of-way in the Township.
- (c.) Collocation. The shared use of existing small cell facilities shall be preferred to the construction of new facilities provided collocation does not substantially change the physical dimensions of such tower or base station as supported by evidence provided by the Telecommunications Carrier.
- (d.) No application to construct a new freestanding or roof-mounted personal wireless telecommunication service facility shall be approved unless the applicant demonstrates to the reasonable satisfaction of the Township that no existing personal wireless telecommunication service facility within a reasonable distance, regardless of municipal boundaries, can accommodate the applicant's needs. Evidence submitted to demonstrate that no existing personal wireless telecommunication service facility can accommodate the applicant's proposed facility shall consist of one or more of the following:
 - [1.] No existing facilities are located within the geographic area

required to meet the applicant's coverage demands.

- [2.] Existing facilities or structures are not of sufficient height to meet the applicant's coverage demands and cannot be extended to such height.
- [3.] Existing facilities or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- [4.] Existing facilities or structures do not have adequate space on which proposed equipment can be placed so it can function effectively and reasonable.
- [5.] The applicant's proposed antenna would cause electromagnetic interference with the antennas on the existing facility or the antennas on the existing facility would cause interference with the applicant's proposed antenna.
- [6.] The applicant demonstrates that there are other compelling limiting factors, including but not limited to economic factors, that render existing facilities or structures unsuitable.

(e.) Applications for new freestanding wireless telecommunication facilities shall provide evidence that the facility can accommodate co-location of additional carriers.

(f.) A telecommunications carrier who is issued a license pursuant to this section who wishes to add, supplement, or modify the telecommunications facility for which the license was previously granted shall be required to obtain a new license in accordance with the procedures established by his section, except that no new license shall be required if the addition, supplement or modification does not materially change the overall size and dimensions of the telecommunications facility.

(g.) Each small cell facility in a Township right-of-way requires a separate license for that specific facility.

(h.) Federal requirements. All wireless telecommunication facilities shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless telecommunication service facilities. Failure to meet such revised standards and regulations shall constitute grounds for revocation of Township approvals and removal of the facility at the owner's expense.

(i.) Safety standards. All personal wireless telecommunication facilities shall conform to the requirements of the international building code and national electrical code, as applicable.

(j.) Abandonment. Personal wireless telecommunication facilities which are abandoned by nonuse, disconnection of power service, equipment removal or loss of lease for greater than six months shall be removed by the facility owner. Should the owner fail to remove the facilities, the Township may do so at its option, and the costs thereof shall be a charge against the owner and recovered by certification of the same to the County Treasurer for collection as taxes. If an owner wishes to begin utilizing abandoned equipment again, it must submit a new application.

(4). Small cell antenna and equipment standards.

(a) Small cell facilities on existing poles and structures.

- [1] The proposed installation must not be in excess of the height of the existing pole, or structure before the installation in a length that substantially alters the existing pole.
- [2] The proposed installation shall be constructed, finished, painted and otherwise camouflaged in conformance with best available stealth technology methods, so as to blend in compatibly with its background and be aesthetically consistent with existing poles in terms of color and material.
- [3] Proposal must include an engineer's certification verifying the structural integrity of the pole.
- [4] No pole-mounted small cell antenna or equipment may project beyond the side of the pole in a manner that substantially different from the existing antennae on said pole.
- [5] Each antenna is located inside an enclosure of no more than three cubic feet.
- [6] Antennas and equipment mounted to the exterior of the pole shall be mounted a minimum of 15 feet above the finished grade. The external finish of the equipment cases shall generally match the color of the pole. All mounting bands shall also match the color of the pole. All mounting bands shall match the color of the pole. No exposed wiring or conduit is permitted.
- [7] Locational priorities. New small cell antennas and equipment facilities shall be located in accordance with the priorities listed below. The applicant must demonstrate that all higher priority locations have been investigated and document why higher priority locations cannot be utilized.
 - [a.] Small cell antennas and equipment within the right-of-way of a limited access freeway
 - [b.] Small cell antennas and equipment within the right-of-way of a primary arterial street
 - [c.] Small cell antennas and equipment within the right-of-way of a secondary arterial street
 - [d.] Small cell antennas and equipment within the right-of-way of a major collector street
 - [e.] Small cell antennas and equipment within the right-of-way of a minor collector street
 - [f.] Small cell antennas and equipment within the right-of-way of a local street
- [8] No small cell antennas and equipment facility shall be placed directly in front of a residential principal building projection as determined by §102-87 Note (c)(1)(a).
- [9] No small cell antennas and equipment may be spaced less than 500 linear feet from another pole supporting small cell equipment. However, this

provision can be administratively waived for wireless equipment that are proposed to be placed within nonresidential zones where the proposal is determined to be aesthetically consistent with existing poles in terms of color and material.

- [10] The applicant must demonstrate that no tree limb or branch exists within 20 feet along all utility lines extending from the wireless pole to the next poles in line.

(b) New Wireless poles

- [1] Wireless poles are not permitted in residential zones that do not have above grade utility poles of any kind already installed. However, the applicant may seek relief from this requirement from the approving authority pursuant to N.J.S.A. 40:55D-70(d)(1).
- [2] Wireless poles shall be of the same type (e.g. wooden, steel) as the existing utility poles located on either side of it.
- [3] Wireless poles are not permitted in areas with underground utilities. However, the applicant may seek relief from this requirement from the approving authority.
- [4] The height of the wireless pole, including the small cell equipment installation, cannot be any more than six feet higher than the height of the two nearest existing poles but in no event be higher than 50 feet in height.
- [5] To the greatest extent feasible all antenna, equipment, wiring and conduit shall be located inside the pole.
- [6] No pole-mounted small cell antenna or equipment may project beyond the side of the pole more than 24 inches and must be located inside an enclosure of no more than three cubic feet in volume.
- [7] Antennas and equipment mounted to the exterior of the pole shall be mounted a minimum of 15 feet above the finished grade. The external finish of the equipment cases shall generally match the color of the pole. All mounting bands shall also match the color of the pole. No exposed wiring or conduit is permitted.
- [8.] Locational priorities. New small cell antennas and equipment poles shall be located in accordance with the priorities listed below. The applicant must demonstrate that all higher priority locations have been investigated and document why higher priority locations cannot be utilized.
- [a.] Small cell antennas and equipment within the right-of-way of a limited access freeway
- [b,] Small cell antennas and equipment within the right-of-way of a primary arterial street
- [c.] Small cell antennas and equipment within the right-of-way of a secondary arterial street
- [d.] Small cell antennas and equipment within the right-of-way of a

major collector street.

[e.] Small cell antennas and equipment within the right-of-way of a minor collector street

[f.] Small cell antennas and equipment within the right-of-way of a local street.

[9.] No small cell antennas and equipment facility shall be placed directly in front of a residential principal building projection as determined by §102-87 Note (c)(1)(a).

[10.] The proposed wireless pole shall be constructed, finished, painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and be consistent with existing poles in terms of color and material.

[11.] No wireless pole may be spaced less than 500 linear feet from another existing pole or proposed wireless pole that is capable of supporting small cell equipment. However, this requirement may be administratively waived for wireless poles that are proposed to be placed within nonresidential zones where the proposal is determined to be aesthetically consistent with the surrounding streetscape.

[12.] The applicant must demonstrate that no tree limb or branch exists within 20 feet of the new wireless pole.

[13.] The wireless pole cannot be placed in such a way that it encroaches upon or blocks sight triangles.

[14.] The applicant must demonstrate that the proposed small cell equipment cannot be collocated.

(c) Ground mounted placement of equipment cabinets along with any small cell equipment installation must conform to the following:

[1.] Underground equipment. To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that underground equipment enclosures will effectively prohibit the provision of personal wireless services then ground mounted or pole mounted equipment is allowed. Underground equipment enclosures shall have no size limitations.

[2.] Ground mounted small cell cabinets and equipment shall:

[a.] Not exceed six feet in height

[b.] Occupy more than 20 s.f. of ground area

[c.] May not be located between the pole and the curbline or edge of pavement

[d.] Must be set back a minimum of four feet from the curbline or edge of pavement

[e.] Not be located more than 15 feet from the small cell antenna pole

[f.] Ground based equipment boxes must be located in areas with existing foliage or other aesthetic features to obscure the view of the equipment box. Additional landscaping may be required to meet this requirement.

- [g.] Shall not conflict with sidewalks or pedestrian and bicycle movements
 - [h.] May fail to comply with required sight triangle and breakaway design in accordance with AASHTO regulations.
 - [o.] The applicant may seek relief from any of these requirements from the Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70(d)(1).
- [3.] Small cell cabinets and equipment must provide an area for a temporary emergency generator location which is not in the paved road surface and shall not conflict with pedestrian or bicycle movement.
 - [4.] No small cell equipment shall be placed within 500 feet of an existing small cell equipment installation. This shall not preclude the co-location of two such facilities on the same pole or within the same vault.
 - [5] The cumulative size of a small cell equipment installation for any one site shall not exceed 30 cubic feet.

(5). Application Process.

The licensing agreement for small cell antennas and equipment in Township right-of-way's entered into pursuant to this chapter shall include the following provisions:

- (a.) The term shall not exceed 25 years.
- (b.) Any person who desires a license pursuant to this section shall file an application with the Township Administrator. The application shall include the following information:
 - [1.] The identity of the license applicant, name, address, email address and telephone number including all affiliates of the application.
 - [2.] A description of the telecommunications services that are or will be offered or provided.
 - [3.] A description of the telecommunications facility(ies).
 - [4.] A description of the transmission medium that will be used by the licensee to offer or provide telecommunications services.
 - [5.] A copy of the FCC license for the facility or a sworn statement from the applicant attesting that the facility will comply with current FCC regulations.
 - [6.] To the extent that filing of the licensing agreement application establishes a deadline for action on any other permit that may be required in connection with the facility, the applicant must include complete copies of applications for every required permit (including without limitations site plan application, variance application, street opening permit, construction permits and electrical permits) with all engineering completed and with all fees associated with each permit.
 - [7.] If an applicant contends that denial of the application would prohibit or effectively prohibit the provisions of service in violation of law or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted

to supplement this evidence if doing so would prevent the Township from complying with any deadline for action on the application.

[8.] A statement of which shot clock or shot clocks apply to the application and the reason the chosen shot clocks apply.

[9.] Engineering plans, a survey, specifications and a network map of the telecommunications facility to be located within the Township all in sufficient detail to identify:

[a.] The location and route requested for applicant's proposed telecommunications facility.

[b.] The location of all antennas, cells and nodes for applicant's proposed telecommunications facility.

[c.] The location of all overhead and underground public utility, telecommunications, cable, water, sewer drainage and other facilities in the public way along the proposed route.

[d.] The specific trees, structures improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove, relocate or alter.

[e.] Survey. Every applicant must provide the Township with a professional survey demonstrating that the area on which it proposes to place small cell equipment and/or a wireless pole is located within the public right-of-way. The applicant must also provide easting and northing coordinates in state plane for inclusion in a GIS inventory.

[f.] Small cell equipment. The Township Engineer and/or Township Planer shall review all applications and make a recommendation to the Township Committee as to whether a supplemental license is in compliance with the terms of this section and the license agreement and may therefore be issued.

[g.] Wireless poles. The Township Engineer and/or Township Planner shall review all applications and make a recommendation to the Township Committee as to whether a license is in compliance with the terms of this section and the license agreement and may therefore be issued.

[h.] Any denial of a supplemental license must be in writing, based on substantial evidence, and provide the facts upon which such a denial is based.

[10.] Proof of notice pursuant to the requirements setforth in § 102-46.5F8.

(c) Third party review.

[1.] Telecommunications carriers use various methodologies and analysis tools, including geographically based computer 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 provider. The Township may require such a technical review to be paid for by the

applicant for a telecommunication facility. The selection of the third-party expert may be by mutual agreement between the applicant and the Township or at the discretion of the Township, with a provision for the applicant 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. The expert review of the technical submission shall address the following:

- [a.] The accuracy and completeness of the submission;
- [b.] The applicability of analysis techniques and methodologies;
- [c.] The validity of conclusions reached;
- [d.] Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the telecommunications facilities and to offer or provide the telecommunications services.
- [e.] Information to establish that the telecommunications facility meets the current standards and regulation of any agency of the federal government with the authority to regulate telecommunications facilities.
- [h.] Information to establish that the proposed telecommunications facility conforms to the requirements of the international building code and national electrical code, as applicable.

- [2.] Based on the results of the third part review, the Township may require changes to the application for the facility that comply with the recommendation of the expert.

(d.) An application for a license under this section shall be accompanied by a payment of a \$500 fee, plus a \$100 additional fee for each additional small wireless facility.

(e.) Pursuant to N.J.S.A.54:30A-124, the Township shall recover reasonable fees for actual services incurred in the review of all applicants under this section. The applicant shall make a \$5,000 deposit toward anticipated municipal expenses which shall be placed in an escrow account. If said escrow account contains insufficient funds to enable the Township to perform its review, the Chief Financial Officer shall provide the applicant a notice of insufficient balance. In order for review to continue, the applicant shall, within 30 days, post a deposit to the account in an amount to be mutually agreed upon.

(f.) An applicant, upon receiving a license for the placement of small cell equipment or a wireless pole in the Township right-of-way, may proceed in requesting all other necessary site plan approval, variances, street opening permits and building permits and, upon receiving same, may proceed with construction. Applicants must comply with all other state and federal laws, rules and regulations along with any other applicable local ordinances.

(g.) There will be a \$300 per-year small cell wireless facility fee for all recurring fees including any right-of-way access fee or fee for attachment to municipally owned structures in the right-of-way.

6. Assignment or transfer of small cell facility licenses.

Ownership or control of a license issued pursuant to this section may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the Township, which shall not be unreasonably withheld, as expressed by resolution.

7. General indemnification of Township in connection with telecommunications facilities.

Each license grantee shall indemnify and hold the Township and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a grant agreement made or entered into pursuant to this chapter.

8. Revocation or termination of license.

(a.) The Township may revoke a license granted under this chapter for the following reasons:

- [1.] Construction or operation without a license.
- [2.] Construction or operation at an unauthorized location.
- [3.] Unauthorized substantial transfer of control of the grantee.
- [4.] Unauthorized assignment of a license.
- [5.] Unauthorized sale, assignment or transfer of grantee's assets or a substantial interest therein.
- [6.] Misrepresentation or lack of candor by or on behalf of a grantee in any application to the Township.
- [7.] Abandonment of the telecommunications facility. A telecommunications facility shall be deemed "abandoned" if it is either disconnected from power service or unused for greater than six months. Abandoned telecommunications facilities shall be removed by the owner. Should the owner fail to remove the telecommunications facility, the Township may do so at its option, and the costs thereof shall be a charge against the owner.
- [8.] Insolvency or bankruptcy of the grantee.
- [9.] Material violation of the Township Code.

(b.) In the event that the Township believes that grounds exist for revocation of a license, it shall give the grantee written notice of the apparent violation or noncompliance, providing a statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding 30 days to furnish evidence:

- [1.] That corrective action has been or is being, actively and expeditiously pursued to remedy the violation or noncompliance; and
- [2.] That rebuts the alleged violation or noncompliance; and
- [3.] That it would be in the public interest to impose some penalty or sanction less than revocation.

(c.) The Township shall consider the apparent violation or noncompliance in a public meeting, with respect to which the grantee shall be given notice and a reasonable opportunity to be heard concerning the matter.

9. Notification required.

(a.) Any telecommunications carrier who desires a license to change existing use, construct, install, operate, maintain or otherwise locate a telecommunications facility in the Township shall provide notice to property owners certified by the Township Planner to be within 200 feet of the proposed telecommunication facility.

- (b.) Notice shall be given to a property owner by mailing a copy thereof by certified mail and regular mail to the property owner at the address as shown on the said current certified tax list and service by mailing shall be deemed complete upon deposit with the US Postal Service; and
- (c.) Notice pursuant this section shall state the identity of the telecommunications carrier; a description of the telecommunications services that are or will be offered or provided; a description of the location(s) of any telecommunications facilities; and a description of the telecommunications facilities to be installed and the location of the telecommunications facilities. The notice shall also advise that a copy of the applicant's application is on file with the Township Planner and may be reviewed by the public.
- (d.) In the case of an application of an application that seeks to construct, install, operate, maintain or otherwise locate a telecommunications facility or equipment on any property or right-of-way owned or controlled by the State of New Jersey or County of Monmouth – including, but not limited to, a State or County right-of-way – the applicant shall also provide notice to the Township and obtain approval from the State or County authorizing the placement of such telecommunications facility on any such property or right-of-way.

SECTION II Severability.

If any section, paragraph subsection, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

SECTION III Repealer.

The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this ordinance shall remain in full force and effect.

SECTION IV Inconsistent ordinance.

All ordinances or parts thereof inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistency.

SECTION V This ordinance shall take effect immediately upon passage, publication and filing according to law.

I hereby certify the Ordinance foregoing to be a true copy of an Ordinance introduced by the Township Committee of the Township of Colts Neck on the 27th day of April, 2022. A public hearing will be held on May 11, 2022, 7:00 p.m. Town Hall, 124 Cedar Drive.



J.P. Bartolomeo, Mayor



Trina Lindsey, Township Clerk

RECORD OF VOTE										
	First Reading					Second Reading				
	April 27, 2022					May 11, 2022				
	M S	Yes	No	NV	Ab	M S	Yes	No	NV	Ab
Mayor Bartolomeo		X					X			
Deputy Mayor Fitzpatrick	S	X				S	X			
Torchia Buss		X					X			
Rizzuto	M	X				M	X			
Viola		X					X			
M - Moved S - Seconded X - indicates vote NV - Not Voting Ab - Absent										



TO: Kathleen Capristo, Township Administrator
FROM: Timothy Anfuso, P.P. – Township Planner *TA*
RE: Ordinance No. 2022-5
DATE: May 11, 2022



Attached please find a Resolution adopted by the Colts Neck Township Planning Board finding that Ordinance No. 2022-5 is consistent with the Township Master Plan.

MUNICIPALITY OF COLTS NECK TOWNSHIP PLANNING BOARD
CONSISTENCY REPORT PURSUANT TO N.J.S.A. 40:55D-26

WHEREAS, pursuant to N.J.S.A. 40:55D-64, the Governing Body of a Municipality shall refer any proposed zoning ordinance or amendment thereto to its Planning Board prior to hearing on the adoption of such zoning ordinance or amendment; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26, the Planning Board shall make and transmit to the Governing Body a report with respect to such zoning ordinance or amendment thereto including identification of any provisions in the proposed Development Regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, the Governing Body has submitted to the Planning Board a proposed ordinance amendment entitled, **ORDINANCE 2022-5 "AN ORDINANCE OF THE TOWNSHIP OF COLTS NECK IN THE COUNTY OF MONMOUTH AND THE STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING SECTION 46.5 ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS" IN ARTICLE VI, CHAPTER 102 OF THE CODE OF COLTS NECK TOWNSHIP"**

pursuant to the aforesaid statutory requirements; and

WHEREAS, the Planning Board conducted a meeting on **MAY 10, 2022** due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act and the Municipal Land Use Law and a quorum of the Planning Board being present, the Board reviewed and considered the proposed amendments to the Zoning Ordinance to determine their consistency with the Master Plan and Re-Examination Report, the Planning Board does hereby make the following report to the Governing Body of the Municipality:

1. The proposed Development Regulation revision or amendment thereto reviewed is entitled as set forth above.
2. The purpose of the proposed Development Regulation revision or amendment is to: **AMEND AND SUPPLEMENT SECTION 102-46.5 TO PROVIDE FOR LICENSING AND DEVELOPMENT STANDARDS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS POLES IN PUBLIC RIGHT-OF-WAYS.**
3. The proposed Development Regulation revision or amendment is consistent with the Master Plan of the Municipality.

NOW, THEREFORE BE IT RESOLVED by the Planning Board on this 10TH day of MAY, 2022 that the within report be transmitted to the Governing Body of the Municipality forthwith.

OFFERED BY: Kostka

SECONDED BY: Lutkewitte

ROLL CALL:

Yes: Tobia, Bartolomeo, Fitzpatrick, Bader, Kostka and Lutkewitte

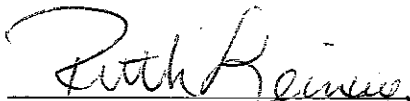
No: None

Abstain: None

Absent: Viola, Corsi, Stanford, Penczak and Lukowitz

I HEREBY CERTIFY that the above is a true and exact copy of the report adopted by the Planning Board of the Municipality of at its meeting held on **MAY 10, 2022**.

Dated: May 10, 2022


Secretary Planning Board of the
Municipality of COLTS NECK TOWNSHIP