

ORDINANCE 2019-15

ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN,
STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER
209 OF THE BOROUGH CODE OF THE BOROUGH OF BAY HEAD
ENTITLED "STREETS AND SIDEWALKS" SO AS TO ADD ARTICLE III
ENTITLED "RIGHTS OF WAYS"

BE IT ORDAINED, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 209 of the Borough Code of the Borough of Bay Head entitled "Streets and Sidewalks" is hereby amended and supplemented to establish new Article III to be entitled, "Rights of Way" which shall read in its entirety as follows:

Article III RIGHTS OF WAY

§209-19. Rights of Way- Purpose.

A. Statement of purpose.

The Borough finds and declares 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 the Borough's Right of Ways. The purpose of this chapter is to protect the property of the Borough and its citizens by creating permit system for all new poles, antennas and cabinets which are proposed to be placed in the municipal Right-of-Way.

§ 209-20 Rights of Way Permits; Definitions

For purposes of this Chapter 209, the following definitions shall apply:

- a. "Anticipated Municipal Expenses" shall mean the cost of processing an application for a Right-of-Way permit including, but not limited to all professional fees such as engineering, planning or attorney fees such as are normally charged for approval escrows.
- b. "Cabinet" shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from in the municipal Right-of-Way.
- c. "Electrical Distribution System" shall mean the part of the electrical system, after the transmission system, that is dedicated to delivering electric energy to an end user.
- d. "Existing Pole" shall mean a pole that is in lawful existence within the municipal Right-of-Way.
- e. "Ground Level Cabinets" shall mean a Cabinet that is not attached to an existing pole and is touching the ground.
- f. "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 or the like, held by the Borough as an easement or in fee simple ownership. This term also includes Right-of-Ways held by the County of Ocean where the Borough's approval is required for the use of the same pursuant to *N.J.S.A. 27:16-6*.
- g. "Pole" shall mean a long, slender, rounded piece of wood or metal.
- h. "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.

- i. "Pole Mounted Cabinet" shall mean a Cabinet that is proposed to be placed on an existing or proposed Pole.
- j. "Proposed Pole" shall mean a Pole that is proposed to be placed in the municipal Right-of-Way.
- k. "Public Grounds" shall mean any lands, areas, buildings or installations owned by the Borough of Bay Head or any of its Departments, agencies or commissions, and shall include municipal Board of Education lands, areas, buildings or installations.
- l. "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.
- m. "Right-of-Way Permit" shall mean an approval from the Borough, setting forth applicant's compliance with the requirements of this Chapter.
- n. "Surrounding Streetscape" shall mean existing Poles within the same Right-of-Way which are located within five hundred (500) feet of the proposed Pole.
- o. "Borough Council" shall mean the Borough Council of the Borough of Bay Head.
- p. "Underground Cabinets" shall mean a Cabinet that is located beneath the surface of the ground.
- q. "Utilities Regulated by the Board of Public Utilities" shall mean 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.
- r. "Utility Service" shall mean electric, telephone or cable service.

§ 209-21 Application of this Chapter to Utilities Regulated By The Board Of Public Utilities; Other Entities

Notwithstanding any franchise or Right-of-Way agreement to the contrary, all facilities proposed to be placed within the municipal Right-of-Way by a utility regulated by the Board of Public Utilities and all other entities lawfully regulating any facility, equipment, antenna, cabinet or other installation within the municipal Right-of-Way shall be subject to the standards and procedures set forth within this Chapter and shall require Right-of-Way permits for the siting of poles, antennas, cabinets and related facilities, equipment or other installation within the municipal Right-of-Way.

§ 209-22 Pole Mounted Antennas, Access to Right-of-Way, Right-of-Way Agreements

- a. No person shall operate or place any type of pole mounted antenna within the municipal Right-of-Way without first entering in to a Right-of-Way agreement pursuant to the provisions of this Chapter.
- b. The terms of said Right-of-Way agreement shall include:
 - i. A term not to exceed ten (10) years;
 - ii. Reasonable insurance requirements;
 - iii. A fine for unauthorized installations;
 - iv. A reference to the siting standards set forth in this Chapter;
 - v. Any other items which may reasonable be required for the applicant's operation within the municipal Right-of-Way.

§ 209-23 Rights of Way Permits; Siting Standards for Poles, Antennas and Cabinets in the Right-of-Way.

- a. No pole, antenna or cabinet shall be installed in the municipal Right-of-Way without the issuance of a Right-of-Way Permit for that installation.
- b. Pole 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 higher.
 - ii. Distance from the curb line: No pole shall be farther than eighteen (18) inches from the curb line.
 - iii. Location, Safety and Aesthetics: No pole shall be erected in the municipal Right-of-Way unless it:
 1. Is replacing an existing pole; or,
 2. Is approved pursuant to a land development application by the Borough's Land Use Board pursuant to a Land Use Application; or,
 3. Is located on the opposite side of the street from a part of the electrical distribution system; and,
 4. Is two hundred (200) linear feet from any other existing pole or proposed pole along the same side of the street; and,
 5. Is not located in an area with Underground Utilities; and,
 6. Does not inhibit any existing sight triangles; and,
 7. Allows adequate room for the public to pass and repass along and across the public Right-of-Way; and,
 8. Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties.
- c. Ground Level Cabinet Site Standards.

Ground level cabinets are prohibited in all municipal Right-of-Ways and any public grounds.
- d. Underground Cabinet/Vault Site Standards.
 - i. Underground Cabinets are the preferred method of cabinet siting within the Borough of Bay Head and permitted in the municipal Right of Way in all Zones.
 - ii. Underground Cabinet/Vaults Siting shall not disturb any underground utilities.
 - iii. The Borough shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any underground Cabinet.
- e. Pole Mounted Antenna And Pole Mounted Cabinet Siting Standards.

- i. Pole Mounted Antennas are permitted on poles in the municipal Right of Way, provided that each pole mounted antenna:
 - 1. Does not exceed three (3) cubic feet in volume; and,
 - 2. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and,
 - 3. Does not inhibit any existing sight triangles; and,
 - 4. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.
 - ii. Pole Mounted Cabinets are permitted on poles in the municipal Right of Way, provided that each pole mounted antenna:
 - 1. Does not exceed sixteen (16) cubic feet in volume; and,
 - 2. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and,
 - 3. Does not inhibit any existing sight triangles; and,
 - 4. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.
 - iii. The Borough shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna or pole mounted Cabinet.
- f. Pole Mounted Antenna And Underground Cabinet/Vault Siting Standards.
- i. Pole Mounted Antennas are permitted on poles in the municipal Right of Way, provided that each pole mounted antenna:
 - 1. Does not exceed three (3) cubic feet in volume; and,
 - 2. Is finished or painted and otherwise camouflaged so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and,
 - 3. Does not inhibit any existing sight triangles; and,
 - 4. Allows adequate room for the public to pass and repass along and across the public Right-of-Way.
 - ii. Underground Cabinets/Vaults are permitted with poles in the municipal Right of Way, provided that each underground cabinet:
 - 1. Shall not disturb any underground utilities.
 - iii. The Borough shall require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna and underground Cabinet/Vault.

§ 209-24 Application Process

- a. Pre-Application Meeting. Prior to making a formal application with the Borough for use of the municipal Right-of-Way, all applicants are advised to meet with the Borough Engineer to review the scope of the applicant's proposal.
- b. The Borough Council shall, by resolution, approve or disapprove every Right-of-Way Permit application based upon the recommendations provided to it pursuant to subsections (e) and (f) below.
- c. All applications made under this Section and Chapter shall be expedited so as to comply with the shot clocks set forth in the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment By The Removal Of Barriers To Infrastructure Investment," WT Docket No. 17-79; WC Docket No. 17-84.
- d. Every application made under this Section and Chapter must include a stamped survey prepared by a New Jersey licensed land surveyor demonstrating that any proposed pole, cabinet or antenna is located within the municipal Right-of-Way. Any such application which does not include such survey shall immediately be deemed incomplete.
- e. The Borough Engineer shall review all applications and advise the Borough Council of his or her recommendation to approve, deny or approve with conditions such applications.
- f. If the Borough Council denies any application made under this Section and Chapter, it shall do so in writing and set forth the factual basis therefor.
- g. Waiver. The Borough Council may waive any siting standard set forth in this Chapter where the applicant demonstrates that strict enforcement of any siting standard will:
 - i. Prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C.A. § 253(a); or,
 - ii. Prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C.A. § 332(c)(7)(B)(i)(II); or,
 - iii. Will violate any requirement set forth in the Federal Communications Commission Order entitled "Accelerating Wireless Broadband Deployment By The Removal Of Barriers To Infrastructure Investment," WT Docket No. 17-79; WC Docket No. 17-84.

§ 209-25 Right Of Way Permit Fees And Deposit Toward Anticipated Municipal Expenses.

- a. Every Right-of-Way Permit application must include a Right-of-Way Permit fee in the following amounts:
 - i. New Pole or Replacement pole - \$50.00
 - ii. One (1) to five (5) sites for installation of antenna and cabinets - \$500.00.
 - iii. Each additional site for installation of antenna and cabinets - \$100.00.
- b. Deposit toward anticipated municipal expenses.
 - i. In addition to the Right-of-Way Permit application fee, with the exception for an application to install a new pole, the Borough Engineer shall require the posting of an escrow in the amount of two thousand dollars (\$2,000.00) toward anticipated municipal expenses including, but not limited to planner, engineer, legal or other municipal fees related to review of an application for a Right-of-Way Permit under this Chapter.

- ii. The applicant's deposit shall be deposited in an escrow account. If at any time such deposit contains insufficient funds to enable the Borough to conduct its review of the Right-of-Way Permit application, the Borough Engineer shall provide the applicant with notice of an insufficient balance. The applicant shall deposit within ten (10) days of such notice such additional deposit as shall be agreed upon by the applicant and the Borough Engineer to complete the Borough's review.
- iii. After a final decision has been made by the Borough Council in accordance with this Chapter regarding the applicant's Right-of-Way Permit application, any unused balance from the applicant's deposit toward anticipated municipal expenses shall be refunded.

§ 209-26 Miscellaneous Provisions.

- a. Any approval granted pursuant to this Chapter does not relieve the applicant from receiving consent of the owner of the land above which an applicant's facility may be located as required under New Jersey law.
- b. Applicant must, in addition to obtaining a Right-of-Way Permit pursuant to this Chapter, also receive any and all necessary road opening permits, construction permits and any other permits required under the Ordinances of the Borough of Bay Head including, but not limited to the Uniform Construction Code.
- c. Applications for Borough consent pursuant to *N.J.S.A. 27:16-6* requires adherence to the standards set forth in this Chapter. No such applicant shall be required to enter into a Right-of-Way Agreement with the Borough.

§ 209-27. Violations and penalties.

Any person violating or failing to comply with any other provision of this article shall, upon conviction thereof, be punishable by a fine of no less than \$100 and no more than \$1,000, by imprisonment not to exceed 90 days or by community service of not more than 90 days or any combination of fine, imprisonment and community service, as determined in the discretion of the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Bay Head held on the 7th day of October, 2019, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the 4th day of November, 2019, at 7:00 p.m., at the Bay Head Municipal Building, located at 83 Bridge Avenue, Bay Head, New Jersey, at

which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

Patricia M. Applegate, RMC
Borough Clerk, BOROUGH OF BAY HEAD

Honorable William W. Curtis
MAYOR