

ORDINANCE NO. 2019-71

**ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY
AMENDING AND SUPPLEMENTING CHAPTER 608, STREETS AND SIDEWALKS,
RELATING TO THE PLACEMENT OF TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS OF WAY.**

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank that Chapter 608 of the Revised General Ordinances of the Borough of Red Bank, Monmouth County is hereby amended and supplemented as follows:

SECTION 1. §608 Article X "Telecommunications Facilities in the Public Rights of Way" be added as follows:

Section 608-49, Definitions

The following words and phrases shall, for the purpose of this Chapter, have the meaning herein indicated:

- a. **Colocation** means 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.
- b. "Public Right-of-Way" means 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 Borough or County or State as an easement or in fee simple ownership, or any other area that is determined by the Borough or County to be a right-of-way in which the Borough may allow the installation of telecommunications facilities.
- c. "Small Cell Equipment" and "Small Cell Facility" shall have a meaning consistent with Title 47 of the Code of Federal Regulations and include:
 - i. Wireless facilities and transmission media, including femtocells, Pico cells and microcells.
 - ii. Outside Distributed Antenna Systems ("ODAS").
 - iii. A personal wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended, that is attached, mounted or installed on an existing pole or wireless pole in the public rights-of-way and used to provide telecommunications (defined herein) services.
 - iv. A wireless service facility that meets both of the following qualifications:
 1. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
 2. Primary equipment enclosures are not larger than seventeen (17) 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.
- d. "Telecommunications" means 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.
- e. "Telecommunications Carrier" means any provider of Telecommunications Services.
- f. "Telecommunications Facility" means 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.
- g. "Telecommunications Service(s)" means the offering of telecommunications to the public, regardless of the Telecommunications Facilities used.
- h. "Wireless Pole" means a column or post lawfully located in the Borough or County or State right-of-way used solely to support small cell equipment and/or provide personal wireless services as defined by federal law.

Section 608-50, Purpose

The purpose and intent of this Section is to:

- a. Establish a local policy concerning Telecommunications Facilities, including Small Cell Equipment and Wireless Poles in right of ways of the Borough, County and State.
- b. Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the Borough and the County.
- c. Assure that any and all Telecommunications Carriers providing Telecommunications Services in the Borough through Telecommunications Facilities, including but not limited to Small Cell Equipment and Wireless Poles, comply with the laws, rules and regulations of the Borough.
- d. Assure that the Borough can continue to fairly and responsibly protect the public health, safety and welfare.
- e. Enable the Borough to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.
- f. Allow for telecommunications facilities while preserving the historic character of the Borough and allowing safe and efficient pedestrian, bicycle and vehicular use of the right of ways.

Section 608-51, PERMITTED ZONES AND USE FOR TELECOMMUNICATIONS FACILITIES

Placement of Telecommunications Facilities, shall be limited to placements within the boundaries of Zoning Districts HB, NB, I, LI, MS, BR-1, CCD-1 & CCD-2 as depicted on the Official Zoning Map of the Borough of Red Bank.

Section 608-52, Licensing of Small Cell Facilities and Wireless Poles.

The following shall apply to applications for all Small Cell Facilities and Wireless Poles:

- a. Any Telecommunications Carrier who desires to construct, install, operate, maintain, or otherwise locate Small Cell Facilities within any right of way within the Borough, for the purpose of providing Telecommunications Services to persons and areas inside or outside the Borough shall first obtain a license from the Borough in accordance with this Section.
- b. For purposes of this Section, the construction, installation, operation, maintenance or location of Telecommunications Facilities includes the colocation with any Telecommunications Facility.
- c. A Telecommunications Carrier who is issued a license pursuant to this Section who, during the License Term, wishes to add, supplement, or modify the Telecommunications Facility for which the license was granted shall be required to obtain a new license in accordance with the procedures established by this Section; except that no new license shall be required during the License Term if the addition, supplementation or modification does not materially change the size, dimensions, technical aspects, or appearance of the Telecommunications Facility, as reasonably determined by the Borough Administrator. Nothing in this Section shall be construed as eliminating or otherwise altering duration of the License Term.
- d. No application to construct a new wireless Telecommunication Service Facility shall be approved unless the applicant demonstrates to the reasonable satisfaction of the Borough 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 Telecommunications Facilities are located within the geographic area required to meet the applicant's coverage demands.
 2. Existing Telecommunications Facilities are not of sufficient height to meet the applicant's coverage demands and cannot be extended to such height.
 3. Existing Telecommunications Facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
 4. Existing Telecommunications Facilities do not have adequate space on which proposed equipment can be placed so it can function effectively and reasonably.
 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 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. License Term: The term of a license issued pursuant to this Section shall be five (5) years.

- f. License renewals shall be subject to the same standards and application process as new applications.

Section 608-53, SMALL CELL FACILITY LICENSE APPLICATION PROCESS

Any person who desires a license pursuant to this Section shall file an application with the Borough Administrator. The application shall include the following information and requirements:

- a. The identity of the license applicant, including all affiliates of the applicant.
- b. A description of the Telecommunications Services that are or will be offered or provided.
- c. A description of the Telecommunications Facility.
- d. A description of the transmission medium that will be used by the licensee to offer or provide Telecommunications Services.
- e. An RFA report.
- f. Identification of the type of pole being used. If it is a new pole, the Borough standard pole must be used. The Borough standard pole shall be selected by the Borough Administrator.
- g. Location of all equipment which must be mounted at least 10' above the ground level or below ground.
- h. Preliminary engineering plans by a licensed Professional Engineer, a property survey, specifications, and a network map of the Telecommunications Facility to be located within the Borough, all in sufficient detail to identify:
 - 1. The location and route requested for applicant's proposed Telecommunications Facility.
 - 2. The location of all antennae, cells and nodes for applicant's proposed Telecommunications Facility.
 - 3. The location of all overhead and underground public utility, telecommunications, cable, water, sanitary sewer drainage and other facilities in the public way along the proposed route.
 - 4. The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove, relocate or alter.
- i. A preliminary construction schedule and completion date.
- j. A traffic control plan.
- k. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the telecommunications facilities.
- l. Information to establish the applicant's technical qualifications, experience and expertise regarding the Telecommunications Facilities and Telecommunications Services described in the application.
- m. 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.
- n. Information to establish that the Telecommunications Facility meets the current standards and regulations of any agency of the federal government with the authority to regulate Telecommunications Facilities.
- o. Information to establish that the proposed Telecommunications Facility conforms to the requirements of the International Building Code, National Electrical Code and BPU Regulations, as applicable.
- p. Proof of notice pursuant to the requirements set forth below in "Notification for Telecommunication Facilities.

Telecommunications Facilities providers 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 Borough may require such a technical review to be paid for by the applicant for a Telecommunications Service Facility. The selection of the third party expert may be by mutual agreement between the applicant and the Borough or at the discretion of the Borough, 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 Telecommunications Facilities and not a subjective review of the site selection. The expert review of the technical submission shall address the following:

- i. The accuracy and completeness of the submission;
- ii. The applicability of analysis techniques and methodologies;
- iii. The validity of conclusions reached; and,
- iv. Any specific technical issues designated by the Borough.

Section 608-54, DETERMINATION BY THE BOROUGH ADMINISTRATOR FOR SMALL CELL FACILITY LICENSES

- a. Upon the Borough Administrator's determination that an application for a license is complete, including obtaining County approval, when necessary in accordance with this Ordinance, the Borough Administrator, after consultation with the Borough Attorney and Borough Engineer, shall issue the determination.
- b. Determination shall be issued within ninety (90) days of the applicant's submission of a complete application.
- c. If the application is denied, the written determination shall include the reasons for denial and supported by facts upon which the denial is based.

Section 608-55, FEES, BONDS & ESCROWS FOR SMALL CELL FACILITY LICENSES

- a. An application for a license under this Section shall be accompanied by a payment of a Five Hundred (\$500.00) dollar fee.
- b. Pursuant to N.J.S.A. § 54:30A-124, the Borough shall recover reasonable professional fees for actual services incurred in the review of applications under this Section. Applicant shall make a deposit in an escrow for professional fees in the amount of Two Thousand (\$2,000.00) dollars. If said escrow account contains insufficient funds to enable the Borough to perform its review, the Chief Financial Officer shall provide the applicant a notice of insufficient balance. In order for review to continue, the applicant shall, within fifteen (15) days, post a deposit to the account in an amount to be mutually agreed upon.
- c. Each owner of a licensed telecommunications facility shall post a \$100,000 bond that can be called by the Borough for the costs of correcting any non-compliance with this ordinance including removing the telecommunications facility and restoring the area in the event of abandonment.

Section 608-56, ASSIGNMENT OR TRANSFERS 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 Borough as expressed by resolution.

Section 608-57, GENERAL INDEMNIFICATION OF BOROUGH IN CONNECTION WITH SMALL CELL FACILITY LICENSES

Each license grantee shall indemnify and hold the Borough 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.

608-58, REVOCATION OR TERMINATION OF SMALL CELL FACILITY LICENSES

- a. The Borough may revoke a license granted under this Chapter for the following reasons:
 - i. Construction or operation without a license.
 - ii. Construction or operation at an unauthorized location.
 - iii. Unauthorized substantial transfer of control of the grantee.
 - iv. Unauthorized assignment of a license.
 - v. Unauthorized sale, assignment or transfer of grantee's assets, or a substantial interest therein.
 - vi. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the Borough.
 - vii. Abandonment of the Telecommunications Facility. A Telecommunications Facility shall be deemed "abandoned if it is: Disconnected from power service; installed without

proper approvals; or, unused for greater than six (6) months. Abandoned Telecommunications Facilities shall be removed by the owner with the area restored to its pre-telecommunications facility condition. Should the owner fail to remove the Telecommunications Facility and restore the area to its pre-telecommunications facility condition, the Borough may do so at its option, and the costs thereof shall be a charge against the owner.

- viii. Insolvency or bankruptcy of the grantee.
- ix. Material violation of the Borough General Ordinances.
- b. In the event that the Borough 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:
 - i. That corrective action has been or is being actively and expeditiously pursued, to remedy the violation or noncompliance; and
 - ii. That rebuts the alleged violation or noncompliance; and
 - iii. That it would be in the public interest to impose some penalty or sanction less than revocation.
- c. The Borough 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.

608-59, NOTIFICATION REQUIRED BY TELECOMMUNICATIONS FACILITY PROVIDERS

- a. Any Telecommunications Carrier who desires to change existing use, construct, install, operate, maintain, or otherwise locate a Telecommunications Facility in the Borough shall provide notice to properties certified by the Borough Administrator to be within five hundred (500') feet of the proposed Telecommunications Facility.
- b. Notice shall be given to a property owner by:
 - i. Serving a copy thereof on the property owner as shown on the current certified tax list, or his or her agent in charge of the property; or
 - ii. 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. Service by mailing shall be deemed complete upon deposit with the U.S. Postal Service. Notice pursuant to 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. The notice shall also advise that a copy of the applicant's application is on file with the Borough Administrator and may be reviewed by the public. Notice must be provided to the Borough prior to commencement of work.
- c. Such other and further information as may be required by the Borough Administrator.
- d. In the case of an application that seeks to construct, install, operate, maintain, or otherwise locate a Telecommunications Facility or equipment on any property owned or controlled by the County, including but not limited to, a County right-of-way, the applicant shall also provide notice to and obtain a permit from the County authorizing the placement of such Telecommunications Facility on any such property or right-of-way.

608-59, LAND USE ORDINANCE NOT SUPERSEDED

The requirements of this Chapter shall be in addition to, and shall not be in lieu of any requirements imposed by the Borough's Land Use and Development Ordinance. If the Land Use and Development Ordinance requires site plan approval, or the approval of any variances from the Borough Planning and Zoning Board, the applicant shall be required to secure any approvals and/or variances following the grant of a license under this Chapter. A Planning or Zoning Board application for the construction, installation, or location for Telecommunications Facilities shall not be deemed complete until a license under this Chapter is granted by the Borough.

SECTION 2: A copy of this Ordinance, upon introduction, shall be provided to all appropriate municipal agencies, including the Planning or Zoning Board, for their review and comment pursuant to applicable New Jersey Statutes.

SECTION 3: Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

SECTION 4: If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 5: This Ordinance shall take effect immediately upon its passage and adoption according to law.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin	Motion	X			
Councilwoman Triggiano		X			
Councilman Ballard					X
Councilman Yngstrom	Second	X			
Councilman Ziprich		X			
Councilwoman Horgan		X			

Introduction: November 13, 2019

Public Hearing/Adoption: November 26, 2019

I hereby certify the above to be a true copy.

Pamela Borghi

Pamela Borghi, Municipal Clerk