

**BOROUGH OF HO-HO-KUS
COUNTY OF BERGEN, NJ**

ORDINANCE 2019-28

AN ORDINANCE TO AMEND CHAPTER 85 OF THE CODE “ZONING ORDINANCE OF THE BOROUGH OF HO-HO-KUS” AND PROVIDING FOR THE REGULATION OF SMALL CELL WIRELESS FACILITIES WITHIN THE MUNICIPAL RIGHT OF WAY.

WHEREAS, the Borough of Ho-Ho-Kus (“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 (“Small Cells”); and,

WHEREAS, the Borough has determined that its public 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 Telecommunications Act preserves local government’s ability to manage the public Rights-of-Way on a competitively neutral and non-discriminatory basis 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 Federal Communications Commission (FCC) has recently 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 places a shot clock on 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 erection of New Poles and Ground Level Cabinets in the Municipal Right-of-Way raise significant aesthetic and safety concerns; and,

WHEREAS, the FCC in its recent order 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, 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 Borough of Ho-Ho-Kus that:

Section 1. Chapter 85 of the Code of the Borough of Ho-Ho-Kus is hereby amended by the addition of a new Section 85-39.3 to read as follows:

Wireless Facilities in the Right-of-Way. Notwithstanding anything else in Chapter 85 Zoning of the Code of the Borough of Ho-Ho-Kus, the installation of antennas, small cells and other communication devices and associated equipment in the public municipal roadway either on existing or new poles are permitted if a Right-of-Way Use Agreement and Right-of-Way Permits are obtained under Code Section 85-39.3 Encroachments in the Public Right-of-Way.

Section 2. Article VII of the Code of the Borough of Ho-Ho-Kus is hereby amended by the addition of a new section 85-39.3 to read as follows:

85-39.3 Communication Facilities Right-of-Way Permits

A. Definitions

Administrative Review means ministerial review of an Application by the Borough Council and Borough Engineer to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Section.

Antenna means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

Applicable Codes means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Authority, including any amendments adopted by the Authority, or otherwise are applicable in the jurisdiction.

Applicant means any Person who submits an Application under this Section.

Application means a written request, on a form provided by the Borough of Ho-Ho-Kus.

Authority means the Borough Council of the Borough of Ho-Ho-Kus.

Collocate means to install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the Application. “Collocation” has a corresponding meaning.

Communications Facility means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

Communications Service means cable service, as defined in 47 U.S.C. § 522(6); information service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

Communications Service Provider means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).

Decorative Pole means a Pole that is specially designed and placed for aesthetic purposes.

Eligible Facilities Request means an eligible facilities request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.

FCC means the Federal Communications Commission of the United States.

Laws means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.

Ordinary Maintenance and Repair means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public R.O.W.

Permit means a written authorization to install, at a specified location(s) in the Public R.O.W., a Communications Facility, Tower or a Pole to support a Communications Facility.

Permittee means an Applicant that has received a Permit under this Section.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

Pole means a legally constructed pole, such as a utility, lighting, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support Structure and does not include a pole or structure that supports electric transmission lines.

Provider means a Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public R.O.W. any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.

Public Right of Way or Public R.O.W. means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, or similar purpose. The term does not include a federal interstate highway, state highway, county right of way or other areas that are not within the legal jurisdiction, ownership or control of the Authority.

Replace or Replacement means, in connection with an existing Pole, Support Structure or Tower, 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 Section and any other applicable regulations in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

Small Wireless Facility means a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of no 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.

State means the State of New Jersey.

Support Structure means a structure in the Public R.O.W. other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

Tower means any structure in the Public R.O.W. built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

Wireless Facility means the equipment at a fixed location or locations in the Public R.O.W. 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.

Wireless Services means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Wireless Services Provider means a Person who provides Wireless Services.

B. Access to Public Right of Way

Prior to 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, or any Tower, a Person shall enter into a Right of Way Use Agreement with the Borough of Ho-Ho-Kus expressly authorizing use of the Public Right of Way for the Communications Facility, Pole or Tower proposed to be installed.

1. The term of the R.O.W. Use Agreement shall not exceed 15 years.
2. The R.O.W. Use Agreement authorizes the Provider's non-exclusive use of the Public R.O.W. for the sole purpose of installing, maintaining and operating Communications 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 Laws, this Section 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 Provider 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 agreement. Nothing herein shall authorize the use of the Borough's Poles, Towers, Support Structures, or other structures in the Public R.O.W. All use of the Borough's Poles, Towers, Support Structures, and other structures in the Public R.O.W. shall require a separate agreement, and the payment of separate fees for such use.
3. The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public R.O.W. in a safe condition, and in good order and repair.
4. The Provider shall provide insurance and indemnification of the Borough as described in the R.O.W. Use Agreement. The coverage must be at least as broad as:
 - a. Worker's Compensation and Employer's Liability Insurance. Provider shall provide proof of Worker's Compensation Insurance and be in compliance with the Worker's Compensation Law of the State of New Jersey. Employer's Liability: Limit of liability shall be a minimum of \$500,000, in accordance with New Jersey Statute.
 - b. Comprehensive General Liability. Comprehensive general liability ("CGL") insurance with limits no less than \$2,000,000 per occurrence.

c. Automobile Liability. Automobile liability insurance covering claims for bodily injury and property damage arising from all owned, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit.

C. R.O.W. Permit

1. 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, or Towers without first receiving a Permit to the extent required under this Section, and any other permit or authorization required by applicable Laws.
2. The Authority shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has applied for and received the R.O.W. Use Agreement required by this Section, or otherwise has a current and valid franchise with the Borough expressly authorizing use of the Public R.O.W. for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.
3. The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as 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.

D. Location and Siting

1. Height. No Pole shall be taller than thirty-five (35) feet in height including the antennas or 110% of the height of Poles in the Surrounding Streetscape, within 500 feet of the Pole, whichever is less.
2. Distance from curb line. No Pole shall be farther than eight (8) feet from the curb line. However, if there is a situation involving a greater right-of-way area and it is appropriate to set the pole back further, the reviewing authority may grant an exception within its reasonable discretion.
3. Location, Safety and Aesthetics. No pole shall be erected in the Right-of-Way unless it:
 - a. Is replacing an Existing Pole; or
 - b. Is approved by the Borough Council; or
 - c. Is located within the Municipal Right-of-Way; and

- d. Is at least two hundred (200) linear feet from any other Existing Pole or Proposed Pole along the same side of the street containing a communications facility; and
 - e. Is not located in an area with Underground Utilities; and
 - f. Does not inhibit any existing sight triangles; and
 - g. Allows adequate room for the public to pass and re-pass across the Right-of-Way; and
 - h. 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.
4. The Authority may require new poles to be decorative poles if appropriate.
5. Pole Mounted Antennas are permitted on New and Existing Poles, provided that each Pole Mounted Antenna:
- a. Does not exceed three (3) cubic feet in volume; and
 - b. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 - c. Does not inhibit sight triangles; and
 - d. Allows adequate room for the public to pass and repass across the municipal right-of-way.
6. Pole Mounted Cabinets are permitted on New and Existing Poles, provided that each Pole Mounted Cabinet:
- a. Does not exceed sixteen (16) cubic feet and is no wider or project more than two (2) feet. There must be a minimum clearance of eight (8) feet under a pole-mounted cabinet. Any pole-mounted cabinet not in conformance with the foregoing must be ground mounted and appropriately screened with landscaping along the rear of the cabinet facing residential properties; and
 - b. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
 - c. Does not inhibit sight triangles; and
 - d. Allows adequate room for the public to pass and repass across the municipal right-of-way.

7. The Authority may also require that an applicant provide a certification from an engineer licensed in the State of New Jersey attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.
8. Ground mounted equipment may be used only to house equipment and other supplies in support of the wireless facility.
9. Underground Utilities. Unless otherwise agreed to in writing by the Authority or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public R.O.W., the Provider with permission to occupy the same portion of the Public R.O.W. shall locate its Communications Facilities underground at its own expense. The Authority may, in its sole discretion, approve above-ground placement of equipment cabinets, pedestals and similar equipment. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above ground, the Provider and Authority shall work to find a suitable location for such facilities or equipment, which may be outside the Public R.O.W.
10. All wireless equipment associated with the Pole or Tower, including the wireless equipment associated with the antenna and any preexisting associated equipment shall not be more than twenty-eight (28) cubic feet in volume.
11. The Provider shall upon completion of construction provide the Borough with as-built drawings and a map showing the location of the facility and equipment.

E. Restoration Requirements

1. The Provider, 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 Provider's Communications Facilities, Poles, Towers or work in or adjacent to the Public R.O.W. The area damaged or disturbed shall be properly landscaped to stabilize the soil and shall include screen scrub planting where deemed appropriate by the approving authority.
2. If the Provider fails to timely restore, repair or replace the Public R.O.W. as required in this subsection, the Authority or its contractor may do so and the Provider shall pay the Authority's costs and expenses in completing the restoration, repair or replacement.

F. Removal, Relocation and Abandonment

1. Within 30 days following written notice from the Authority, the Provider 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, Support Structures or Towers within the Public R.O.W., including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Section), 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 Provider shall be responsible to the Borough for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.

2. The Borough retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower 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 Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Borough shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.
3. A Provider shall notify the Borough of abandonment of any Communications Facility, Pole, Support Structure or Tower 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 Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the Provider's own expense, unless the Borough determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers 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, Support Structures or Towers.
4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or Towers as required in this subsection, the Borough or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Borough incurs arising from the delay.

G. Fees and Charges

1. **Agreement/License Application Fee.** Every Person requesting a Right of Way Agreement, Franchise Agreement or License Agreement from the Borough shall pay an application fee of \$250.00, which shall be paid upon submission of the Right of Way Agreement, Franchise Agreement or License Agreement application.
2. **Permit Application Fee.**
 - a. The Applicant shall pay a Permit application fee of \$500.00 for an Application for up to five small wireless facilities submitted simultaneously by a Provider. The fee of \$100.00 is established for each additional small wireless facility.
 - b. The Applicant shall pay a non-recurring fee for a new pole (not a collocation) intended to support one or more small wireless facilities of \$1,000.00.
3. A \$270.00 per small wireless facility fee per year shall be paid to the Borough.
4. **Deposit Towards Anticipated Municipal Expenses.**

TO BE DETERMINED BY THE REVIEWING AUTHORITY

5. **Other Fees.** The Applicant or Provider 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 Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Borough owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public R.O.W., as set forth in attachment agreements authorizing such use.
6. **No Refund.** Except as otherwise provided in a Right of Way Agreement; Franchise Agreement; License, the Provider may remove its Communications Facilities, Poles or Towers from the Public R.O.W. at any time, upon not less than 30 days prior written notice to the Borough, and may cease paying to the Borough any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public R.O.W. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.

H. Permit Applications

1. **Permit Required.** Unless expressly authorized in this Section or in writing by the Borough Council, no Person may construct, install or maintain in the Public R.O.W. any Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, 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 Provider or its duly authorized representative may work in the Public R.O.W. prior to obtaining a Permit, provided that the Provider 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.
2. **Permit Application Requirements.** The Application shall be made by the Provider or its duly authorized representative and shall contain the following:
 - a. The Applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
 - b. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
 - c. A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Ordinance.
 - d. If applicable, a copy of the authorization for use of the property from the Pole, Tower or Support Structure owner on or in which the Communications Facility will be placed or attached.
 - e. Detailed construction drawings regarding the proposed facility.
 - f. To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

g. For any new aboveground facilities, accurate visual depictions or representations, if not included in the construction drawings.

3. **Proprietary or Confidential Information in Application.** Applications are public records that may be made publicly available pursuant to the New Jersey Open Public Records Act. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the Borough shall treat the information as proprietary and confidential, subject to the New Jersey Open Public Records Act and the Borough’s determination that the Applicant’s request for confidential or proprietary treatment of Application materials is reasonable. The Borough shall not be required to incur any costs to protect the Application materials from disclosure, other than the Borough’s routine procedures for complying with the New Jersey Open Public Records Act.
4. **Ordinary Maintenance and Repair.** A Permit shall not be required for Ordinary Maintenance and Repair. The Provider 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.
5. **Material Changes.** Unless otherwise agreed to in writing by the Authority, any material changes to an Application, as determined by the Authority in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Section 85-39.3 **I. Application Review** unless otherwise provided by applicable Laws.
6. **Application Fees.** Unless otherwise provided by applicable Laws, all Applications pursuant to this Section shall be accompanied by the Fees required under Section 85-39.3 **G. Fees and Charges**.
7. **Effect of Permit.** A Permit from the Borough Council authorizes an Applicant to undertake only the activities in the Public R.O.W. specified in the Application and Permit, and in accordance with this Section and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public R.O.W.; a Permittee or Provider must obtain all necessary approvals from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant authority to the Applicant to interfere with other existing uses of the Public R.O.W.

8. **Duration.** Any Permit for construction issued under this Ordinance shall be valid for a period of 180 days after issuance, provided that the period may be extended for up to an additional 90 days upon written request of the Applicant (made prior to the end of the initial 180 day period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the Applicant.
9. **Batch Permit.** An Applicant may simultaneously submit not 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 Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application.

I. Application Review

1. **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 voluntarily with the Borough Engineer to review the scope of the Applicant's proposal.
2. All applications made under this section shall be expedited so as 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. 170-84.
3. The Borough Engineer shall review all applications for the placement of new Poles and Ground Level Cabinets within the municipal R.O.W. and the placement of Pole Mounted Antennas and Pole Mounted Cabinets within the Municipal R.O.W. and advise the Borough Council whether the application is complete and whether it meets the requirements of this Ordinance.
4. Except as otherwise provided by applicable Laws, the Authority shall: within thirty (30) days of receiving an Application, notify the Applicant if the Application is incomplete, and identify the missing information. The Applicant may resubmit the completed Application within ten (10) days without additional charge, in which case the Authority shall have thirty (30) days from receipt of the resubmitted Application to verify the application is complete, notify the Applicant that the Application remains incomplete or, in the Borough's sole discretion, deny the Application; and

5. The Authority shall review the Application and, if the Application conforms with applicable provisions of this Ordinance, the Borough Council shall issue the Permit, subject to the standard permit requirements published by the Borough.
6. The Authority shall make its final decision to approve or deny the Application within sixty (60) days for a collocation of a small wireless facility to an existing structure, and ninety (90) days to deploy a small wireless facility on a new structure, after the Application is complete (or deemed complete in the event the Borough does not notify the Applicant that the Application or resubmitted Application is incomplete). Review of an Application to deploy a facility other than a small wireless facility using a new structure shall be decided within 150 days.
7. Waiver. The Authority may waive any siting standard set forth in this Ordinance where the Applicant demonstrates that strict enforcement of said Standard:
 - i. Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C.253(a); or
 - ii. Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
 - iii. Will violate any requirement set forth by the Federal Communications Commission 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.
8. The Borough Council shall advise the Applicant in writing of its final decision.

Section 3. If any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall take effect upon final adoption and publication in accordance with law.

NOTICE OF PENDING ORDINANCE

This Ordinance published herewith was introduced and pass upon first reading at a meeting of the Municipal Council of the Borough of Ho-Ho-Kus, in the County of Bergen, New Jersey, held on October 22, 2019. It will be further considered for final passage after the public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423-1547, in said Borough on November 26, 2019, at 7:30 p.m. at which time and place all interested member of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said has been posted on the bulletin board upon which public notices are customarily posted in the Borough Hall and copies are available at no charge in the Office of the Borough Clerk for members of the general public who may request them.

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HO-HO-KUS AT THE PUBLIC MEETING ON **NOVEMBER 26, 2019.**

ATTEST: _____ Joan Herve, RMC, Borough Clerk

APPROVED: _____ Thomas W. Randall, Mayor