**BOROUGH OF STONE HARBOR**

**CAPE MAY COUNTY, NEW JERSEY**

**ORDINANCE No.**

**ORDINANCE AMENDING CHAPTER 475 OF THE CODE OF THE BOROUGH OF STONE HARBOR ENTITLED “STREETS AND SIDEWALKS” TO AUTHORIZE THE USE OF THE BOROUGH RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT**

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**SECTION 1. Chapter 475 of the Borough of Stone Harbor Code entitled “Streets and Sidewalks” is hereby amended and supplemented to add a new section designated as Article V as follows**:

**475-20 Wireless Communications Facilities in the Public Rights-of-Way.**

**475-21 Legislative Intent; Factual Determinations**

Borough Council finds, determines and acknowledges the following:

(1) It is necessary and appropriate to supplement and/or amend the Stone Harbor Borough Code to address issues associated with the deployment of wireless communications facilities in the public rights-of-way.

(2) It acknowledges that wireless communications carriers may enter into written agreements with parties that have the lawful right to erect poles in the public rights-of-way pursuant to N.J.S.A. 48:3-18, and that the consent of the municipality is required pursuant to N.J.S.A. 48:3-19, if the party seeking to install such facilities does not have an independent lawful right to construct such facilities.

(3) There exists a present need to provide for the deployment of small wireless facilities throughout the Borough.

(4) The Borough Council of the Borough of Stone Harbor deems it necessary and appropriate to supplement and/or amend the Borough Code to address issues associated with the deployment of wireless communications facilities in the public rights-of-way; and

(5) It is in the public interest to encourage the prompt deployment of communications facilities in order to improve the efficiency and capacity of communications networks that serve the public.

(6) The purpose of this section is to allow the prompt deployment of wireless communications facilities in the public rights-of-way while also effectively managing the rights-of-way in the interests of the public health, safety and welfare, through the use of co-location and multi-carrier wireless facilities which minimize the number of wireless facilities throughout the Borough.

(7) The Borough acknowledges that in connection with the use of those public rights-of-way under the jurisdiction of the County of Cape May, municipal consent is required in addition to the consent of the County pursuant to N.J.S.A. 27:16-6; and

(8) The Borough acknowledges that notwithstanding the proscriptions of 47 U.S.C. §253(a), it has the authority to manage the public rights-of-way as provided in 47 U.S.C. §253(c); and

**475-22 Definitions.**

1. For the purposes of this Chapter, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Any term not defined in this section shall have the meaning ascribed to it in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., unless the context clearly requires otherwise. In the event that a term is not defined by this Chapter, said term shall have its common and/ordinary meaning.
2. Definitions:

***Applican****t* means the entity seeking a Borough permit to construct or install a wireless facility or facilities in the Borough Right-of-Way. Applicant shall include a carrier, a Competitive Local Exchange Carrier (CLEC) or other Third-Party Operator as herein defined. The Applicant shall notify its contractors and subcontractors of the requirements of this Chapter and shall be responsible for any violations of this Chapter by any of its contractors. Applicant shall include the term “Permittee” when required permits have been issued pursuant to this Section.

***Borough***means the Borough of Stone Harbor, in the County of Cape May, State of New Jersey.

***Carrier***means any firm, partnership, association, corporation, limited liability Company, or any other legally recognized organization, licensed by the Federal Communications Commission to provide Personal Wireless Services or authorized by the New Jersey Board of Public Utilities to provide telecommunications services in the State of New Jersey.

***Co-location* means** the shared use of wireless facilities by more than one wireless carrier.

***COMPETITIVE LOCAL EXCHANGE CARRIERS (CLECs)* means** a phone company authorized by the New Jersey Board of Public Utilities (sometimes referred to as “NJBPU”) to provide telecommunications services in direct competition with the Incumbent Local Exchange Carriers (ILECs) and other CLECs using its own wires and facilities or through wholesale sharing arrangements with other providers. This does not include wireless carriers.

* + - As an approved CLEC, the carrier receives certain rights and privileges related to access to rights-of-ways, poles and conduits to place its wires and facilities used only in the provision of landline telecommunications services.

* + - If CLECs are providing wireless services, which are not within the Board’s jurisdiction, the CLEC must follow federal and local municipal zoning rules to gain access to rights of-ways, poles and conduits to provide its wireless services.
		- If an approved CLEC also provides wireless services or wireless capacity to a wireless provider, it must obtain local zoning approval and permits from the municipality.

***Conduit*** *means* a casing or encasement for wires or cables.

***Construction Permit***means that permit issued by the Construction Official of the Borough of Stone Harbor in accordance with the Uniform Construction Code of New Jersey to permit construction or installation of telecommunications equipment pursuant to this Chapter.

***County***means the County of Cape May, State of New Jersey.

***Day or Days***means calendar days unless the text should indicate business days. Calendar days include Saturday, Sunday, and Legal Holidays. Business days shall exclude Saturday, Sunday, and Legal Holidays.

***Facility or Facilities***means all structures, devices, equipment and materials, including but not limited to: antennas, radios and radio cabinets, electrical wires and cables, fiber optic cables, communications and video cables and wires, poles, conduits, pads, backup power supply and other components of Personal Wireless Service Facilities, and appurtenances thereto, located in the public rights-of-way. Each pole mounting set up shall be a separate Facility for regulatory purposes, applications, and fees.

***Governing Body***means the Mayor and Borough Council of the Borough of Stone Harbor in the County of Cape May, State of New Jersey.

***Municipality***means the Borough of Stone Harbor, County of Cape May, State of New Jersey.

***Permittee***means the entity to which a permit has been issued pursuant to this Article and Master License Agreement for Use of Public Rights-of-Way. This term shall also mean any contractor or subcontractor doing any work for the carrier.

***Personal Wireless Services***means any technologies defined in 47 U.S.C. 332(c)(7) including commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, provided to personal mobile communication devices through wireless Facilities or any fixed mobile wireless services provided using personal wireless Facilities.

***Personal Wireless Service Facilities***means equipment at a fixed location that enables Personal Wireless Service between user equipment and a communications network, including but not limited to: (a) equipment associated with Personal Wireless Services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services; and (b) Tower, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

***Public Right-of-Way***means the surface, the air space above the surface, and the area below the surface of any Street, road, highway, lane, alley, boulevard, or drive, including the sidewalk, shoulder and area for utilities owned or controlled by the Borough of Stone Harbor or the County of Cape May or within an easement to the public or other easement owned or controlled by the Borough of Stone Harbor or the County of Cape May.

***REVIEW COMMITTEE OF THE BOROUGH or SITE COMMITTEE*** means that Committee established pursuant to Chapter 475-37.

***Small Wireless Facilities***is a cellular network facility capable of delivering high transmission speeds but at lower ranges. “Small” references coverage area, not their physical size.

***STEALTH STRUCTURE* means a** new structure for the mounting of facilities, such as a light pole with integrated antenna, with aesthetics found to be reasonably acceptable to the Site Review Committee. Such a structure shall only be permissible when it is conclusively demonstrated that existing facilities in the area are not adequate or sufficient and that there is no practical or feasible alternative to the construction of a stealth structure. However, even if the applicant conclusively demonstrates that existing facilities in the area are not adequate or sufficient and that there is no practical or feasible alternative to the construction of a stealth structure~~,~~ the application may be denied if the Borough determines that the location of the proposed stealth structure is not appropriate under all of the applicable facts and circumstances or otherwise fails to meet the requirements of this Chapter/Article. If the application is denied, Applicant shall be entitled to appeal as herein provided.

Cross Reference: See Section 475-37(Appeals); 475-28 (Deviations); 475-23 (e) (Master License Agreement);

475-25 (Conditions and Requirements)

By “reasonably acceptable” is meant that the proposed facility or facilities must, to the greatest extent possible, duplicate other structures such as utility poles in the immediate vicinity [e.g. similar size,color, height, design] and shall otherwise meet all the standards established by this Ordinance/Chapter.

***Street***means any street, avenue, boulevard, road, parkway, viaduct, drive or other way as defined in the Municipal Land Use Law, N.J.S.A. 40: 55D-7.

***THIRD PARTY OPERATOR* means** an applicant or permittee that is not specifically a licensed wireless carrier or CLEC that will build, operate and maintain wireless facilities for the provision of service of one or more wireless carriers

***Utility pole*** a tall pole that is used to support telephone wires, electrical wires, etc.

***Zoning Officer***means the Zoning Officer of the Borough of Stone Harbor or his/her authorized designee, including any Assistant Zoning Officer.

***Zoning Permit***means the document signed by the Zoning Officer pursuant to N.J.S.A. 40:55D-18 that is required as a condition precedent to the installation of an individual Facility and which acknowledges that the Facility complies with the provisions of this Chapter, or approved deviation therefrom.

**475-23 Master License Agreement; Procedure to Obtain Permits.**

*Use of Existing Poles*

(a) A carrier seeking to use the Borough rights-of-way for the installation of facilities as defined by this Chapter must first execute the Master License Agreement approved by the Borough Council.

(b) Prior to the execution of the Master License Agreement, the carrier shall provide to the Borough a complete list or inventory of existing poles within the Borough that the carrier will or may use for the installation of facilities.

Such inventory shall be physically viewed and inspected by the Borough within 30 calendar days of receipt and the carrier shall be notified as to whether the designated poles are acceptable to the Borough. If any are rejected, the Borough shall notify the carrier of the pole or poles rejected and the reasons for rejection. Once the final list is agreed upon by the carrier and the Borough Administrator, the list shall be submitted to Borough Council for approval by Resolution. Once approved, such approval shall be good for five years from the date of approval. During such five-year approval period the carrier may, at any time, make use of any of the pre-approved poles by filing an application for a permit with the Borough Zoning Officer with a copy of the notice to both the Borough Clerk and Borough Administrator. The Zoning Officer shall issue a Zoning Permit with the necessary Construction Permit to follow in due course.

(c) No pole or poles shall be used unless a Zoning Permit and Construction Permit is issued as provided herein.

(d) A Zoning Permit and Construction Permit may cover multiple installations in multiple locations provided the specific locations are designed in the Permit Application.

*Use of New or Replacement Poles*

(e) When a carrier concludes that an existing pole or poles cannot be utilized or is unsuitable for the installation of facilities under this Chapter, the carrier may propose the use of a replacement pole or the installation of an additional pole within the right-of-way. The carrier shall submit a preliminary request to the Zoning Officer with copies to both the Borough Clerk and Borough Administrator. Such preliminary request shall contain the exact location of the existing or proposed pole; whether it is a proposed replacement of an existing pole or an additional pole; if an additional pole a description of the proposed installation and type of pole to be utilized; and such additional information as the Borough may require. This section applies to any proposal to install/construct a stealth structure as those terms are defined herein. A new pole or installation will only be approved when a carrier establishes by conclusive evidence that existing facilities are either unusable or unsuitable under the existing circumstances.

Furthermore, it is the carrier’s responsibility to ensure all existing utilities located on a pole that is replaced are removed and properly installed on new/replacement pole.

All pole designs are to be included within proper application and approved by the Borough of Stone Harbor.

(f) Upon receipt of a complete application, and after such supplementation as the Borough may require, the application will be reviewed by the Borough which may include a review by the Site Committee established under this Chapter and within such times as specified in Section 475-26

(g) If the carrier agrees with the preliminary determination, the site inventory of poles will be updated and the matter submitted to Borough Council for approval and, upon approval, the Zoning Permit and Construction Permits may issue.

(h) If the carrier does not accept the preliminary determination, then representatives of both the carrier and the Borough will meet in an effort to resolve disputed issues. If a resolution cannot be reached, then the applicant may pursue the appeal process.

 *Cross reference: 475-37 (Appeals)*

**475-24 Permit Required; Application and Fees.**

1. *Permit required.* No Carrier, without first filing an application and obtaining a Zoning Permit from the Borough Zoning Officer pursuant to N.J.S.A. 40:55D-18, shall construct any Facility within any public right-of-way.
2. *Application requirements.* The application shall contain, at a minimum, the following:
	1. The Carrier's name and address and telephone number of the contact person for such Carrier;
	2. The applicant's name and address, if different than the Carrier, and telephone number of the contact person for such applicant;
	3. The names, addresses, telephone number of the professional consultants, if any, advising the applicant with respect to the application;
	4. A brief description of the proposed work;
	5. A plan with specifications of the Facility showing the work proposed, including sufficient information regarding the components of the Facility, including their types and quantities;
	6. Any request for a deviation from one or more provisions of this Chapter, and
	7. Such additional information as may be reasonably required by the Borough Zoning Officer.
3. *Application fees.* All applications for Zoning Permit pursuant to this Chapter shall be accompanied by a fee and escrow deposit as set forth in Appendix A of this Section.
4. *Recurring fees.* Annual recurring fees shall be payable as set forth in Appendix A

**475-25 Conditions and Requirements.**

1. *Installation of Facilities*. It shall be lawful for wireless communication carriers to install facilities in the public rights-of-way on existing poles only, and such carriers shall comply with all requirements of this Chapter and the terms and condition of the Master License Agreement*.* All applicants shall obtain any and all approvals necessary from the owner and/or operator of the utility poles to be used;
2. *Other approvals.* All applicants shall obtain any and all approvals necessary from any other governmental agency in addition to the owner and/or operator of the utility poles to be used;
3. *Height.* No antenna or attachment to an existing utility pole shall exceed the height of that pole by more than five (5)feet;

*(d) New poles.* No new poles shall be erected for the purpose of placing Facilities regulated herein. The setting of utility poles is regulated by the New Jersey Board of Public Utilities (“BPU”), the Borough authorizes only the utility company to set utility poles in the public rights-of-way in their normal course as they deem appropriate and/or necessary subject to BPU regulation.Any proposed new pole shall follow the procedure specified in §475-23 (e) et. seq. A new pole will be authorized only when a carrier conclusively demonstrates that existing poles or facilities are unsuitable or unusable.

1. *Pole-Mounted equipment.* Equipment shall be pole mounted at a minimum of eight (8) feet from the ground and/or shall conform to all Flood Prevention Ordinance requirements of the Borough including but not limited to base flood plus elevations required, whichever is higher in height and the facility is mounted on a structure fifty (50) feet or less in height, including the antenna or is mounted on a structure no more than ten (10) percent taller than other adjacent structures or does not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater; each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3)cubic feet in volume; all other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty eight (28) cubic feet in volume;
2. *Ground-mounted equipment.* No ground-mounted equipment is permitted on or around any pole;
3. *Color & Conduit.* All antennas, Conduit and equipment shall be a color that blends with the utility pole on which it is mounted. Any cables or wiring attached to the utility pole shall be covered with an appropriate Conduit;
4. *Construction Permits.* Subsequent to the issuance of the Zoning Permit, the Permittee shall obtain any necessary permits required pursuant to the current Uniform Construction Code adopted in New Jersey prior to installation;
5. *Underground work.* All underground work shall follow standard road opening permit requirements; and
6. *Co-locate.* All carriers shall co*-*locate and cooperate with each other to minimize the impact and number of Facilities on and in the public rights-of-way.

**475-26 Action on Zoning Permit Applications; Time for Decision**

The Zoning Officer shall approve or reject the permit application within ten (10) business days, unless the applicant consents, in writing to an extension of time beyond the ten (10) days. If the application is rejected, the reason for such rejection shall be stated in writing. If the Zoning Officer determines that the permit application is incomplete and insufficient to enable the Zoning Officer to either approve or reject the application, then, in such case the Zoning Officer shall inform the applicant in writing what information is missing and this shall be deemed a denial of the application.

 If the application does not conform to the requirements of this Chapter and no request for a deviation is made with the application, the Zoning Officer shall reject such application in writing, stating the reasons therein. If the Zoning Officer is satisfied that the application conforms to the requirements of this Chapter, the Zoning Officer shall issue a permit therefor as follows:

1. Within 60 days for an existing structure; or
2. Within 90 days for a new structure

*Cross reference: 475-37 (Appeals)*

**475-27 Effect of Permit.**

A Zoning Permit from the Zoning Officer shall confirm compliance with this Chapter and shall authorize the Permittee to apply for construction permits to undertake the work set forth in the plans filed with the permit application. The permit shall not grant authority to the Permittee to impinge upon the rights of others who may also have an interest in the public rights-of-way.

**475-28 Deviations.**

1. *Request for deviations.* A Carrier proposing to deviate from one or more of the provisions of this Chapter shall do so in writing to the Zoning Officer as part of the permit application. The request shall identify each provision of this Chapter from which a deviation is requested and the reasons why a deviation should be granted.
2. *Authority to grant deviations.* Relative to additional pole procedures*,* The Zoning Officer shall have no authority to grant a deviation from any conditions of Chapter 475-25 “Conditions and Requirements”. The Zoning Officer shall decide for all other requests whether a deviation is authorized by this Chapter.

* 1. One or more conditions not under the control of the Carrier (such as terrain features or an irregular public rights-of-way line or condition) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and
	2. All other designs, methods, materials, locations or Facilities that would conform to the provision from which a deviation is requested are impracticable in relation to the requested approach.
1. *Additional conditions for granting of a deviation.* As a condition for authorizing a deviation, the Zoning Officer may require the Carrier requesting the deviation to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter but which carry out its purposes.
2. *Material deviations.* In the event the actual size, type, material, or location of any Facilities installed in the public rights-of-way deviate in a materially significant way from that which was shown on the plans submitted with the Zoning Permit application, the Permittee shall file new plans with the Zoning Officer within 30 days of request or be subject to a stop work order, an order of removal, or a requirement to apply to the Governing Body for relief.
3. *Referral to Site Review Committee.* If the Zoning Officer determines that the deviation requested (or existing) is a major deviation and/or that practical hardship has not been properly demonstrated, or is a deviation from Chapter 475-20, the request shall be referred to the Borough Administrator who shall refer the matter to the Site Committee for review. If the Site Committee denies the request for a deviation, then the Permittee shall, within thirty (30) days of said denial, either remove the Facility from the public rights-of-way (if installed) or modify the Facility so that it conforms to this Chapter and submit revised plans to the Zoning Officer for approval.
4. *Review fees.* Any reasonable professional fees incurred by the Site Committee in its review of a request for a deviation or as a result of the installation of a Facility in violation of this Chapter, and for which no approval is granted, shall be paid to the Boroughwithin thirty (30) daysand prior to the issuance of the Zoning Permit as permitted by N.J.S.A. 54:30A-124.

An escrow of twenty-five hundred dollars ($2,500.00) shall be submitted with the request for deviation to the office of the Borough Administratorto cover such fees and be replenished as deemed appropriate by the Zoning Officer.

***Cross reference: Appendix A***

1. The Site Review Committee may, with the blanket approval of the governing body, grant a deviation or waive any requirement of this Chapter whenever there is good cause and it is determined that to do so furthers the intent and purpose of this Section, facilitates the orderly and efficient deployment of small cell facilities and equipment within the Borough and it appears that the best interest of the Borough and the public is served in doing so.

**475-29 Insurance.**

1. *Required coverage and limits.* Each Carrier constructing a Facility in the public rights-of-way shall secure and maintain commercial general liability insurance with limits not less than $2,000,000 for injury or death on one or more persons in any one occurrence and $2,000,000 for damage or destruction in any one occurrence insuring the Carrier as named insured and listing the Boroughas an additional insured on the policies.
2. *Copies required.* The Carrier shall provide copy of certificates of insurance reflecting the requirements of this section to the Boroughwithin ten (10) days following zoning approval and prior to obtaining a construction permit pursuant to this Chapter.
3. *Self-insurance.* A Carrier may self-insure all or a portion of the insurance coverage and limit requirements required by subsection (a) of this section. A Carrier that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insured under subsection (a) or the requirements of subsections (b) of this section. A Carrier that elects to self-insure shall provide to the Boroughevidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit required under subsection (a) of this section. Proof of such financial ability to self-insure shall be provided to the Boroughwithin (10) days following the effective date of the Master License Agreement and prior to obtaining a permit pursuant to this Chapter.
4. *Effect of insurance and self-insurance on Carrier's liability.* The legal liability of the Carrier to the Borough and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder, however neither the Borough nor the Carrier shall be liable to the other for consequential, incidental, exemplary or punitive damages on account of any activity pursuant to this Chapter.

**475-30 Indemnification.**

Prior to constructing a Facility in the public rights-of-way, and as a precondition to the issuance of a permit pursuant to this Chapter, the Carrier shall execute the Master License Agreement, agreeing, among other things, to indemnify and hold harmless the Borough against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the Carrier, its employees, contractors or agents, except to the extent such claims or damage may be due to or caused by the negligence or willful misconduct of the Borough or its employees, contractors or agents.

The Borough will provide the Carrier with prompt, written notice of any claim covered by this indemnification; provided that any failure of the Borough to provide any such notice, or to provide it promptly, shall not relieve the Carrier from its indemnification obligation in respect of such claim, except to the extent the Carrier can establish actual prejudice and direct damages as a result thereof. The Borough shall cooperate with the Carrier in connection with the Carrier’s defense of such claim.

The Carrier shall defend the Borough, at the Borough’s request, against any claim with counsel of the Borough’s choosing that is reasonably satisfactory to the Carrier.

 *Cross reference: 475-23 (Master License Agreement; Procedure to Obtain Permits)*

**475-31 Permit Suspension and Revocation.**

1. *Right to revoke permit.* The Zoning Officer may revoke or suspend a permit issued pursuant to this Chapter for one or more of the following reasons:
	1. Materially false or incomplete statements in the permit application;
	2. Non-compliance with one or more provisions this Chapter for which a deviation has not been allowed;
	3. The Permittee's Facilities within the public rights-of-way presents a direct or imminent threat to the public health, safety, or welfare;
	4. Permittee's failure to construct the Facilities substantially in accordance with the permit and approved plans, or;
	5. Violation of the terms and conditions of the Master License Agreement.

Before taking any such action, the Zoning Officer shall first consult with the Borough Administrator and Borough Solicitor.

1. *Notice of revocation or suspension.* The Zoning Officer shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to Permittee under this section.
2. *Permittee alternatives upon receipt of notice of revocation or suspension.* Upon receipt of a written notice of revocation or suspension from the Zoning Officer, the Permittee shall have the following options:
	1. Immediately provide the Borough with evidence that no cause exists for the revocation or suspension;
	2. Immediately correct, to the satisfaction of the Zoning Officer, the deficiencies stated in the written notice, providing written proof of such correction to the Zoning Officer within ten (10) business days after the receipt of the written notice of revocation, or;
	3. Within ten (10) business days remove the Facilities located within the public rights-of-way and restore the public rights-of-way to the satisfaction of the Zoning Officer providing written proof of such removal to the Zoning Officer within ten (10) business days after receipt of the written notice of revocation. The Zoning Officer may, in his or her discretion, extend the time periods provided in this subsection. To be effective extensions must be in writing.

**475-32 Change of Ownership, Owner’s Identity, or Legal Status**

*Notification of change.* A Carrier shall notify the Borough no less than thirty (30) days following the transfer of ownership of any Facility in the public rights-of-way or change in identity of the Carrier. The rights and obligations given to the Carrier pursuant to the Master License and Zoning Permit shall be binding on and benefit the new owner of the Carrier or the Facility, its successors and assigns, who shall have all the obligations and privileges enjoyed by the former owner under the Master License Agreement, Zoning Permit, and all applicable laws, ordinances, rules and regulations, including this Chapter, with respect to the work and Facilities in the public rights-of-way.

**475-33 Traffic Control.**

1. *Warning signs, protective devices, and flaggers.* The Carrier is responsible for providing and installing warning signs, protective devices and flaggers, when necessary for protection of the public and the Carrier's workers when performing work on the public rights-of-way. The carrier and its contractor(s) and subcontractors shall comply with the provisions of the Manual of Uniform Traffic Control Devices to the extent applicable and necessary.
2. *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic. All Road Closures should be coordinated with the Police Department, Fire Department and County Dispatch.
3. *Compliance.* The Carrier shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the Carrier’s attention by the Zoning Officer, Borough Engineer, Fire Department, Police Department, Department of Public Works & Utilities or Code Enforcement.

**475-34 Removal, Relocation, or Modification of Facilities.**

1. *Notice.* Within 30 days following written notice from the Borough, any Carrier with Facilities in the public rights-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities whenever the Borough determines that (a) such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Borough improvement in or upon the public rights-of-way; or (b) because the equipment is interfering with or adversely affecting proper operation of the light or other poles; or (c) the widening of the public rights-of-way. In such instance, the Borough shall cooperate with Carrier to find a replacement location for the Facility that will provide similar radio frequency coverage to the Facility removed or relocated.
2. *Removal of unauthorized Facilities.* Within thirty (30) days following written notice from the Zoning Officer to any Carrier that owns, controls, or maintains any unauthorized Facility or related appurtenances within any public rights-of-way shall, at its own expense, remove all or any part of such Facilities or appurtenances. A Facility is unauthorized and subject to removal, but not limited to, in the following circumstances:
	1. Upon expiration or termination of the Permittee's license, unless otherwise permitted by applicable law;
	2. If the Facility was constructed without the prior grant of a Zoning Permit;
	3. If the Facility was constructed without prior issuance of a required construction permit;
	4. If the Facility was constructed at a location not permitted by the Permittee’s permit; or
	5. Upon abandonment of the Facility. Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of ninety (90) consecutive days, or more, and where there have been no efforts to repair or renew the use during the ninety (90) day period. The Carrier owning, controlling or maintaining the Facility shall have the burden of establishing to the Zoning Officer that the Facility is still being used within thirty (30) days of the notice. All notices described herein shall be in writing and sent by recognized national overnight courier (e.g., U.S. Postal, Federal Express or UPS) for which proof of delivery is supplied. Failure to respond to the Zoning Officer’s request for information regarding the abandonment of the Facility shall constitute a presumption of abandonment. Upon the Zoning Officer’s determination and final written notification to the Carrier of such abandonment the Carrier shall have sixty (60) days within which to:
		1. Reactivate the use of the Facility or transfer the Facility to another entity which makes actual use of the Facility promptly; or
		2. Dismantle and remove the Facility and notify the Zoning Officer in writing of the completion of such removal.

(6) If the facility or any aspect of same was constructed in violation of any provision of this ordinance

If the Entity believes that the determination of abandonment by the Zoning Officer is incorrect it may file a written appeal with the Site Committee as provided in Chapter §475-37 hereof within thirty (30) days of the Zoning Officer’s determination. If the Entity fails to prevail on appeal, or fails to reactivate, or transfer to another active user or remove the service facility the Borough shall have the right to have the Facilities removed at the Carrier’s sole expense. The Borough shall be entitled to reimbursement for all costs and expenses associated with the removal of any Facility thereafter.

**475-35 Cleanup and Restoration.**

Upon completion of all construction or maintenance of Facilities, the Carrier shall remove all debris and restore the right-of-way to a clean and safe condition in a timely manner and to the satisfaction of the Zoning Officer and the Director of the Department of Public Works.

**475-36 Maintenance and Emergency Maintenance.**

1. *General.* Facilities within public rights-of-way shall be maintained by or for the Carrier at the Carrier's sole expense. Carrier shall not damage the Public Right-of-Way and shall keep the Public Right-of-Way free of all debris. If any portion of the Public Right-of-Way suffers damage by reason of access by Carrier, then in that event, Carrier, at its sole cost and expense, shall immediately repair all such damage or replace the damaged portion of the Public Right-of-Way and restore the damaged portion of the property to its condition prior to the occurrence of such damage.
2. *Emergency maintenance procedures.* The noncompliance with normal procedures for securing a required permit shall be excused when a Carrier reasonably determines that an emergency exists.
	1. If an emergency creates a hazard on the traveled portion of the public rights-of-way, the Carrier shall take immediate steps to provide all necessary protection for traffic on the roadway including the use of signs, lights, barricades or flaggers.
	2. In an emergency, the Carrier shall, as soon as practical, notify the Borough Zoning Officer or his or her duly authorized agent and the Borough of Stone Harbor Police Department of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs.

On nights and weekends, the Carrier shall notify the Borough of Stone Harbor Police Department of an emergency if the Borough Zoning Officer is unavailable. If the nature of the emergency is such as to interfere with the free movement of traffic, the Borough of Stone Harbor Police Department shall be notified immediately. To the extent that the Borough of Stone Harbor has actual knowledge of the displacement or damage to any Facility, it shall inform Carrier upon learning of the same.

 **475-37 SITE COMMITTEE; COMPOSITION; FUNCTIONS; APPEALS**

(A). There is hereby created under this Chapter and Section a group to be known as the

Site Committee consisting of the Borough Administrator, the Utilities Committee and Zoning Officer.

(B) The function of the Site Committee shall be as follows:

1. Review and approve an inventory of all existing wood poles in the Borough submitted by a Carrier for the installation of a wireless Facility as defined herein and submit that recommendation to Borough Council.
2. Review and approve the type and location of any new or replacement pole prior to the issuance of a Zoning Permit and Construction Permit under this Section and submit that recommendation to Borough Council.
3. Initially hear and decide any appeal of any determination by the Borough Administrator or the Zoning Officer except that any appealable issue arising under the New Jersey Uniform Construction Code (UCC) shall be heard by the Cape May County Board of Construction Appeals and not by the Site Committee.
4. The Committee may, in its discretion, consult with any Borough consultant regarding the issues under consideration.

(C) Procedure:

1. Appeals to the Site Committee shall proceed pursuant to the terms of this agreement. Generally, an appeal shall be filed within thirty (30) days of the decision being appealed and shall be in writing specifying the reason and grounds for the appeal. A hearing on the appeal shall be scheduled notsooner than twenty (20) nor later than thirty (30) business days from the date of filing. A decision shall be rendered, in writing, within fifteen (15) business days following the hearing.
2. A Carrier, or any other aggrieved party in interest, may thereafter appeal the decision of the Site Committee to the Borough Council by filing a notice of appeal within thirty (30) days following the written decision of the Site Committee. Such notice must be in writing, specify the reasons and grounds for such appeal. Upon the filing of such an appeal the Borough Council may choose one of the following:
3. Refer the matter to a Hearing Officer who shall conduct a hearing substantially following the procedure for administrative hearings in New Jersey. The Hearing Officer shall then submit his/her findings and conclusions with fifteen (15) business days after the close of the Hearing. Borough Council may then accept, reject, or modify the decision of the Hearing Officer based on the record developed before the Hearing Officer; OR
4. Borough Council may select an ad hoc committee of its membership to hear and decide the appeal; OR
5. Borough Council may decide to have the full Council decide the matter.

iii Following the exhaustion of such administrative remedies, any aggrieved person or entity may pursue a further appeal to a Court of competent jurisdiction subject to the Rules of such Court.

**475-38 Enforcement.**

Nothing in this Chapter shall be construed as limiting any additional or further remedies that the Borough may have for enforcement of this Chapter or the right of a Carrier to appeal any decision to a court of competent jurisdiction.

**475-39 Violations and Penalty.**

Any person or entity who violates any of the provisions of this Chapter 475 shall, upon conviction, be subject to the penalties set forth in 1-17 of this Code including the provision for enhanced penalties provided therein. The penalties under this subsection shall be in addition to, and not in place of any other penalty or sanction prescribed herein.

**SECTION 2. Severability.** If for any reason any section of this Ordinance shall be declared illegal by any Court of competent jurisdiction, the remaining section of the Ordinance shall remain in full force and effect, notwithstanding.

**SECTION 3.** **Repealer.** Any Ordinance or provision thereof inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**SECTION 4 Effective date.** This Ordinance shall take effect immediately upon the adoption and publication in accordance with the law.

[Date & Signatures]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ORDINANCE No.**

**APPENDIX A**

**This Appendix is part of Ordinance No.**

Pursuant to Chapter 475-24 of Ordinance No. \_\_\_\_\_\_\_\_\_, the following fees are hereby established for the installation of Small Wireless Facilities:

**INITIAL APPLICATION**:

 For use of an existing pole previously approved by the Borough:

 For one to five poles $ 500.00

 For each additional pole over five – fee per pole $ 100.00

 For the modification or replacement of an existing pole $ 250.00

 Together with the mounting or installation of an associated

 Wireless facility in the right-of-way

 For a new pole or stealth structure – for each such structure $ 1,000.00

 Fee for Change in Carrier $ 1,000.00

**ALL SUBSEQUENT APPLICATIONS**:

 Each application shall be governed by the same fee schedule

 That is applicable to “Initial Application”.

**DEVIATION:**

 In addition to the foregoing fees, any application requesting a

 Deviation shall have an additional fee of` $ 1,000.00

**ESCROW DEPOSIT:**

 Every application shall also be accompanied by an Escrow Deposit

 In the amount of $3,500.00

 The Escrow shall be charged for all professional fees

 of whatever type incurred in reviewing the application.

 This includes fees for attorneys, engineers, telecommunications

 Consultants and any other consultant retained by the Borough.

 Applicant shall be required to replenish such escrow upon demand

 By the Borough.

**RECURRING FEES:** There shall be an annual recurring fee for each Small Wireless

 Facility in the amount of $ 270.00

 This amount shall be invoiced by the Borough and

 Shall be payable July 1 of each year. The first year’s

Payment shall be prorated based on the number of months that such Small Cell Facility has been in existence.

*\*\*Fees are subject to review by the Borough of Stone Harbor Mayor and Council and subject to change.*