

**CITY OF MARGATE CITY
NEW JERSEY**

ORDINANCE #13-2018

**AN ORDINANCE TO AMEND THE REVISED GENERAL ORDINANCES OF THE
CITY OF MARGATE CITY, COUNTY OF ATLANTIC, STATE OF NEW JERSEY,
AMENDING CHAPTER 242 ENTITLED "STREETS AND SIDEWALKS", TO PERMIT
WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY
AND WHERE PERMITTED BY EASEMENT**

WHEREAS, the Governing Body of the City of Margate City (hereinafter "City") deems it necessary and appropriate to supplement and/or amend the City Code to address issues associated with the deployment of wireless communications facilities in the public rights-of-way; and

WHEREAS, the City 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; and

WHEREAS, the consent by the City for the Facilities to be installed shall be limited to structure poles, commonly known as utility poles, for which no new poles of any material shall be erected within the City by a Wireless Company or other entity. It being understood that the setting of poles is regulated by the New Jersey Board of Public Utilities ("BPU") the City authorizes only those that have an independent lawful right to construct utility poles to set poles in the City's public rights-of-way; and

WHEREAS, the City acknowledges that wireless communications carriers may seek to install facilities on private property pursuant to easement agreements which installation shall require authorization by the City which authorization is intended by the adoption of this Ordinance; and

WHEREAS, the City acknowledges that in connection with the use of those public rights-of-way under the jurisdiction of the County of Atlantic, municipal consent is required in addition to the consent of the County pursuant to N.J.S.A. 27:16-6; and

WHEREAS, the City 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

WHEREAS, this Ordinance only effects the limited installation of Facilities in the public rights-of-way and where authorized by easement on poles or towers and shall have no effect on the application of wireless telecommunication equipment and facilities regulated by the Land Use Ordinance Chapter 175 of the City; and

WHEREAS, the purpose of this Ordinance is to allow the prompt deployment of wireless communications facilities in the public rights-of-way and where allowed by easement while also effectively managing the rights-of-way in the interests of the public health, safety and welfare; and

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Margate City, County of Atlantic and State of New Jersey as follows:

SECTION I. Chapter 242 " is hereby amended by the addition of Article 6 captioned "Wireless Communication Facilities in the Public Rights-of-Way and in Easement Areas in Existence as of the Adoption of this Ordinance", to add the following Section in its entirety as follows:

ADDED SECTION:

Article VI. Wireless Communications Facilities in the Public Rights-of-Way and Easements in Existence at the Time of this Ordinance.

SECTION II. Chapter 242-29 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-29 Definitions.

(a) For the purposes of this Ordinance, 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, 40:55D-1, et seq., unless the context clearly requires otherwise. In the event that a term is not defined by this Ordinance, said term shall have its common and/ordinary meaning.

(b) Definitions:

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.

City of Margate City means the City of Margate City, County of Atlantic, State of New Jersey.

Conduit means a casing or encasement for wires or cables.

County means the County of Atlantic, State of New Jersey.

Easement means all those areas within the City of Margate City which have an existing right granted to utility companies such as, but not limited to, the electric company, telephone company, cable company, allowing the erection and maintenance of utility facilities.

Facility or Facilities means all structures, devices, 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 Council of the City of Margate City, County of Atlantic, State of New Jersey.

Municipality means the City of Margate City, County of Atlantic, State of New Jersey.

Permittee means the Carrier to which a permit has been issued pursuant this Ordinance and Master License Agreement for Use of Public Rights-of-Way.

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 by the City of Margate City or within an easement to the public or other easement owned by the City of Margate City.

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

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 Zoning Officer, with input from the Governing Body, if deemed necessary.

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

Zoning Officer means the Administrative Officer as defined in N.J.S.A. 40:55D-3 and the Zoning Officer of the City of Margate City or his/her authorized designee.

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 Ordinance, or approved deviation therefrom.

SECTION III. Section 242-30 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-30 Facilities in the Public Rights-of-Way.

(a) *Purpose.* The purpose and intent of this Ordinance is for the City to exercise, and where authorized by easement, its lawful authority to grant consent to the limited use of the public rights-of-way and to allow the attachment of Facilities only to existing utility poles located therein pursuant to N.J.S.A. 48-19, subject to certain conditions as stated herein, in order to allow the prompt deployment of Facilities while also effectively managing the public rights-of-way and protecting the aesthetic and safety interests of the public.

(b) *Facilities subject to this Ordinance.* This Ordinance applies to all Facilities, as herein defined, within the public rights-of-way, except as otherwise provided in any existing franchise, license or similar agreement. The deployment of Facilities on private property and public property outside of the public rights-of-way shall not be controlled by this Ordinance or the Master License Agreement, but by the City Zoning Ordinance and the New Jersey Municipal Land Use Law. In no event shall this Ordinance apply to the City or facilities owned or operated by the City.

(c) *Master License Agreement Required.* Every Carrier seeking to install Facilities in the public rights-of-way, excluding those holding a franchise, license or similar agreement with the City, shall first enter into the Master License Agreement substantially complying with the requirements of this Chapter and apply for and obtain a Zoning Permit as provided herein. The execution of the Master License Agreement by the Carrier and the City shall grant the City's consent to the Carrier to utilize the public rights-of-way pursuant to N.J.S.A. 48-19 and N.J.S.A. 27:16-6 and shall control the installation, maintenance, and removal of the Facilities.

(d) *Duration of Consent and Removal.* The non-exclusive consent granted to the Carrier shall expire in twenty five (25) years unless earlier terminated. Carrier may cancel this Agreement upon sixty (60) days prior written notice to the City of Margate City. Upon expiration of such consent, or at such earlier date that the Carrier ceases to operate its facilities for a period of ninety (90) consecutive days, the Carrier shall remove its facilities and restore the right-of-way at its sole cost and expense.

SECTION IV. Section 242-31 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-31 Permit Required; Application and Fees.

(a) *Permit required.* No Carrier, without first filing an application and obtaining a Zoning Permit from the City Zoning Officer pursuant to N.J.S.A. 40:55D-18, shall construct any Facility within any public right-of-way.

(b) *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 Ordinance, and
- (7) Such additional information as may be reasonably required by the City Zoning Officer.

(c) *Application fees.* All applications for Zoning Permits pursuant to this Ordinance shall be accompanied by a fee of \$500.00 for each independent Facility as compensation to the City for expenses incurred in processing the application as permitted by N.J.S.A. 54:30A-124.

SECTION V. Section 242-32 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-32 Conditions and Requirements.

(a) *Installation of Facilities.* It shall be lawful for wireless communication carriers to install facilities in the public rights-of-way on existing poles only, shall comply with all requirements of this Ordinance 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;

(b) *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 wooden utility poles to be used;

(c) *Height.* No antenna or attachment to an existing utility pole shall exceed the height of that pole by more than six feet (6’);

(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 City 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.

(e) *Pole-Mounted equipment.* equipment shall be pole mounted at a minimum of 8’ feet from the ground and/or shall conform to all Flood Prevention Ordinance requirements of the City including but not limited to base flood plus elevations required, whichever is higher in height and shall be limited to one (1) antenna and one (1) cabinet or other mounted device at each site per carrier. A single antenna shall not exceed a height of four (4) feet and two (2) feet in width or two (2) antennas each of a maximum dimension of a height of two (2) feet and width of one (1) foot. The cabinet or other mounted device may project beyond the side of the pole no more than thirty (30) inches.

(f) *Ground-mounted equipment.* No ground-mounted equipment is permitted on or around any pole;

(g) *Color & Conduit.* All antennas, Conduit and equipment shall be a color that blends with the wooden utility pole on which it is mounted. Any cables or wiring attached to the utility pole shall be covered with an appropriate Conduit;

(h) *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;

(i) *Underground work.* All underground work shall follow standard road opening permit requirements; and

(j) *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.

(k) No permit shall be issued which would permit the construction or installation of any facilities east of Atlantic Avenue between Atlantic and the Beach, along Ventnor Avenue between Wilson Avenue and Lancaster Avenue, inclusive (Parkway area), or in the Marven Gardens area which area is situate between Ventnor Avenue, Winchester Avenue, Fredericksburg Avenue and Brunswick Avenue unless a deviation is granted by the Governing Body.

SECTION VI. Section 242-33 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-33 Action on Zoning Permit Applications.

The Zoning Officer shall approve or reject the permit application within thirty (30) days, unless the Zoning Officer determines that the permit application is incomplete and insufficient for him to either approve or reject, in which case the Zoning Officer shall inform the applicant in writing what information is missing. If the application does not conform to the requirements of this Ordinance 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 Ordinance, the Zoning Officer shall issue a permit therefor within 30 days.

SECTION VII. Section 242-34 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-34 Effect of Permit.

A Zoning Permit from the Zoning Officer shall confirm compliance with this Ordinance 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.

SECTION VIII. Section 242-35 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-35 Deviations.

(a) *Request for deviations.* A Carrier proposing to deviate from one or more of the provisions of this Ordinance shall do so in writing to the Zoning Officer as part of the permit application. The request shall identify each provision of this Ordinance from which a deviation is requested and the reasons why a deviation should be granted.

(b) *Authority to grant deviations.* The Zoning Officer shall have no authority to grant a deviation from any conditions of Section 15-8.4 "Conditions and Requirements". The Zoning Officer shall decide for all other requests whether a deviation is authorized by this Ordinance and the Carrier requesting the deviation has demonstrated that:

- (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.

(c) *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 Ordinance but which carry out its purposes.

(d) *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.

(e) *Referral to Governing Body.* If the Zoning Officer determines that that the deviation requested (or existing) is a major deviation and/or that practical hardship has not been properly demonstrated, , the request shall be referred to the Governing Body for review. If the Governing Body 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 Ordinance and submit revised plans to the Zoning Officer therefore for approval.

(f) *Review fees.* Any reasonable professional fees incurred by the City in its review of a request for a deviation or as a result of the installation of a Facility in violation of this Ordinance, and for which no approval is granted, shall be paid to the City within thirty (30) and 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 construction office to cover such fees and be replenished as deemed appropriate by the Zoning Officer.

SECTION IX. Section 242-36 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-36 Insurance.

(a) *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 of \$5,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property and \$5,000,000 general aggregate insuring the Carrier as named insured and including the City as an additional insured as their interest may appear under this Agreement on the policies.

(a) *Copies required.* The Carrier shall provide copy of certificates of insurance reflecting the requirements of this section to the City within ten (10) days following zoning approval and prior to obtaining a construction permit pursuant to this Ordinance.

(b) *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 City evidence 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 City within (10) days following the effective date of the Master License Agreement and prior to obtaining a permit pursuant to this Ordinance.

(c) *Effect of insurance and self-insurance on Carrier's liability.* The legal liability of the Carrier to the City 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 City nor the carrier shall be liable to the other for consequential, incidental, exemplary or punitive damages on account of any activity pursuant to this Ordinance.

SECTION X. Section 242-37 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-37 Indemnification.

Prior to constructing a Facility in the public rights-of-way or where authorized by easement, and as a precondition to the issuance of a permit pursuant to this Ordinance, the Carrier shall execute the Master License Agreement, agreeing, among other things, to indemnify and hold harmless the City 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 City, or its employees, contractors or agents. The City will provide the Carrier with prompt, written notice of any claim covered by this indemnification; provided that any failure of the City 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 City shall cooperate with the Carrier in connection with the Carrier's defense of such claim. The Carrier shall defend the City, at the City's request, against any claim with counsel of the City's choosing that is reasonably satisfactory to the Carrier.

SECTION XI. Section 242-38 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-38 Permit Suspension and Revocation.

(a) *Right to revoke permit.* The City Zoning Officer may revoke or suspend a permit issued pursuant to this Ordinance 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 Ordinance 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 such additional time as reasonably necessary provided that send care is being pursued diligently and in good faith.
- (5) Violation of the terms and conditions of the Master License Agreement.

(b) *Notice of revocation or suspension.* The City Zoning Officer shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Ordinance stating the reason or reasons for the revocation or suspension and the alternatives available to Permittee under this section.

(c) *Permittee alternatives upon receipt of notice of revocation or suspension.* Upon receipt of a written notice of revocation or suspension from the City Zoning Officer, the permittee shall have the following options:

- (1) Immediately provide the City with evidence that no cause exists for the revocation or suspension;
- (2) Immediately correct, to the satisfaction of the City Zoning Officer, the deficiencies stated in the written notice, providing written proof of such correction to the City Zoning Officer within ten (10) business days after the receipt of the written notice of revocation, or
- (3) Within 10 days remove the Facilities located within the public rights-of-way and restore the public rights-of-way to the satisfaction of the City Zoning Officer providing written proof of such removal to the City Zoning Officer within ten business days after receipt of the written notice of revocation. The City Zoning Officer may, in his discretion, extend the time periods provided in this subsection. To be effective extensions must be in writing.

SECTION XII. Section 242-39 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-39 Change of Ownership, Owner's Identity, or Legal Status

Notification of change. A Carrier shall notify the City 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 Ordinance, with respect to the work and Facilities in the public rights-of-way.

SECTION XIII. Section 242-40 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-40 Traffic Control.

(a) *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.

(b) *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

(c) *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 City Zoning Officer, City Engineer, Fire Department, or Police Department.

SECTION XIV. Section 242-41 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-41 Removal, Relocation, or Modification of Facilities.

(a) *Notice.* Within 30 days following written notice from the City, 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 City determines that (a) such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City 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 City of Margate City 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.

(b) *Removal of unauthorized Facilities.* Within thirty (30) days following written notice from the City 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 City 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 City Zoning Officer's request for information regarding the abandonment of the Facility shall constitute a presumption of abandonment. Upon the City Zoning Officer's determination and final written notification to the Carrier of such abandonment the Carrier shall have sixty (60) days within which to:
 - a. Reactivate the use of the Facility or transfer the Facility to another entity which makes actual use of the Facility promptly, or
 - b. Dismantle and remove the Facility and notify the City Zoning Officer in writing of the completion of such removal.

If the Entity believes that the determination of abandonment by the City Zoning Officer is incorrect it may file a written appeal with the Governing Body within forty-five (45) days of the City 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 City shall have the right to have the Facilities removed at the Carrier's sole expense. The City shall be entitled to reimbursement for all costs and expenses associated with the removal of any Facility thereafter.

SECTION XV. Section 242-42 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-42 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 City Zoning Officer.

SECTION XVI. Section 242-43 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:

242-43 Maintenance and Emergency Maintenance.

(a) *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.

(b) *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 City Zoning Officer or his or her duly authorized agent and the Margate City 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 Margate City Police Department of an emergency if the City Zoning Officer is unavailable. If the nature of the emergency is such as to interfere with the free movement of traffic, the Margate City Police Department shall be notified immediately. To the extent that the City of Margate City has actual knowledge of the displacement or damage to any Facility, it shall inform Carrier upon learning of the same.

SECTION XVII. Section 242-44 is hereby amended to add the following Section in its entirety as follows:

ADDED SECTION:


242-44 Enforcement.

Nothing in this Ordinance shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Ordinance or the right of a Carrier to appeal any decision to the state courts of New Jersey or the United States District Court for the District of New Jersey.

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

SECTION XXI. Publication. This Ordinance shall take effect immediately upon the adoption and publication in accordance with the law.



Mayor Michael Becker,


Commissioner John Amodeo


Commissioner Maury Blumberg

INTRODUCED: JUNE 7, 2018
ADOPTED: June 21, 2018