

REGULAR COUNCIL MEETING
MARCH 8, 2021

Virtual Zoom Meeting
Irvington, N.J. – Monday Evening
March 8, 2021 - 7:30 P.M.

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call

Present: Jamillah Z. Beasley, Vernal C. Cox, Sean C. Evans, Charnette Frederic, October Hudley,
Orlander G. Vick, Renee C. Burgess, President

Absent: None

President Burgess read the Statement of Proper Notice pursuant to the Sunshine Law.

4. Hearing of Citizens on Agenda Items Only limited to three minutes per person and thirty minutes total

There were no requests to be heard.

5. Hearing of Council Members

There were no requests to be heard.

6. Reports & Recommendations of Township Officers, Boards & Commissions

A. Reports

1. Municipal Court – Mayor’s Monthly Report for January, 2021
2. Municipal Court – Electronic Collections Report – January, 2021
3. Municipal Court - Weekly Summary Report – February 12, 2021 – February 19, 2021

7. Reports of Committees

None

8. Ordinances, Bills & Claims

A. Ordinances on First Reading

Vick - Burgess 1. Establish Procedures To Assure Local Candidates For Public Office
Meet Statutory Residency Requirements (Amended)

VERIFICATION OF RESIDENCY REQUIREMENTS FOR CANDIDATES FOR OFFICE (MAYOR,
COUNCIL MEMBER-AT-LARGE, WARD COUNCIL MEMBER)

Adopted

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Hudley – Beasley 2. Allow Residential Permit Parking on Portions of Osborne Place and Rutgers Street

AN ORDINANCE PROVIDING FOR RESIDENTIAL PARKING PERMITS ON PORTIONS OF RUTGERS STREET AND OSBORNE TERRACE

Adopted

C. Bills & Claims

Burgess – Evans 1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD MARCH 8, 2021 AS ENUMERATED ON THIS LIST FOR MATERIALS, SUPPLIES AND SERVICES FURNISHED, DELIVERED AND/OR PERFORMED HAVE BEEN CERTIFIED BY THE DEPARTMENTS AS CORRECT, EACH CLAIM AND PURCHASE ORDER HAVE BEEN VERIFIED AND REVIEWED FOR THE AVAILABILITY OF FUNDS, ACCURACY OF ACCOUNT CODING AND COMPLETENESS BY THE ADMINISTRATION, THEREFORE:

BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON THAT THE FOLLOWING BE PAID BY THE CHIEF FINANCIAL OFFICER:

BILL LIST \$1,934,038.62

Adopted

Burgess - Hudley 2. Payrolls

February 26, 2021

| REGULAR | OVERTIME | OTHER | TOTAL |
|----------------|-------------|-------------|----------------|
| \$1,565,820.26 | \$94,052.31 | \$82,654.97 | \$1,742,527.54 |

Adopted

9. Resolutions and Motion

A. Resolutions

Burgess – Hudley 1. Resolution Of Sorrow – Former East Ward Two Term Council Member Fred M. Bost

RESOLUTION OR SORROW

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FORMER EAST WARD COUNCIL MEMBER FRED M. BOST

WHEREAS, Fred M. Bost was born on March 12, 1938 to the late John and Pearl Bost, in Monroe, North Carolina; and

WHEREAS, Fred M. Bost was the youngest of eleven children who all predeceased him except for a brother, John, who lives in the Philippines; and

WHEREAS, Fred M. Bost attended public schools in North Carolina and Washington D.C. before he moved to Detroit, Michigan with his siblings; and

WHEREAS, Fred M. Bost enrolled in the US Army and received an honorable discharge in April 1958, and after returning to Detroit, Fred moved to New Jersey to pursue better job opportunities; and

WHEREAS, Fred M. Bost continued his education at Essex County College and Bloomfield College and held various positions including Assistant Director of Community Affairs of Essex County and he retired from the Essex County Sheriff's Office; and

WHEREAS, Fred was always civic minded and active in the community of Elizabeth and then in Irvington; and

WHEREAS, Fred M. Bost in August of 1973, participated in the March on Washington, in 1979 he ran for the District Leader and beat the democratic line A candidate and the candidate supported by the County Executive, and shortly thereafter, he started a Civic Association, and the following year he ran for Councilman; and

WHEREAS, Fred M. Bost served as East Ward Councilman from 1980-1984, having the honorable and historic distinction of being elected the first African American to be elected as Councilman in the Township of Irvington; and

WHEREAS, Fred M. Bost was again elected as East Ward Councilman in 2000, and served a second term from 2000-2004; and

WHEREAS, Fred M. Bost also had the honor and distinction of being the spouse of Irvington's first, and currently only, Female African American Mayor in the Township of Irvington; and

WHEREAS, Fred M. Bost, between 1984 and 2000, served on the Planning Board and Board of Adjustment, both in Irvington, and after moving to Barnegat, he was elected as District Leader and also served on the Barnegat Planning Board for the past several years; and

WHEREAS, Fred M. Bost was a member of Calvary Gospel Church, Newark, NJ until he moved to Barnegat where he was a member of Bayside Chapel serving as a greeter; and

WHEREAS, Fred M. Bost particularly loved his Wednesday Night Sermon Series Group and he enjoyed the piano and loved to play saxophone any chance he could get; and

WHEREAS, Fred was an avid sports enthusiast and played tennis, was a runner, and carried his golf clubs wherever he traveled; and

WHEREAS, Fred M. Bost went home to be with the Lord on February 21, 2021; and

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WHEREAS, he leaves to cherish his memory his wife Sara; two sons Olatungi (Cheryl) and Kenneth (Sherry); four daughters Nina, Kimberly (Lenard), Latasha and Sybil; ten grandchildren Kaci, Andre, Zuri (predeceased), Michael, Jahchey, Sierra, Nakal, Daria, Niani and Zora; two greatgrandchildren Jenesis and Kasen; as well as a host of nephews, nieces, other relatives, and friends:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington hereby mourns the passing of former two term East Ward Councilman Fred M. Bost and sends condolences to his family and many friends during this period of bereavement; and

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of the Municipal Council as a lasting tribute to the memory of Fred M. Bost in memory of his vast political and civic contributions to the Township of Irvington.

Adopted

Burgess – Hudley 2. Commemoration – Women's History Month

COMMEMORATION - WOMEN'S HISTORY MONTH, 2021

WHEREAS, INTERNATIONAL WOMEN'S DAY is held in March of each year and is the central focus of WOMEN'S HISTORY MONTH; and

WHEREAS, schools, communities and local organizations all actively support the goals of WOMEN'S HISTORY; and

WHEREAS, the Federal Government has recognized that for a long time this nation has ignored this sector of our history and, therefore, adopted Public Law 100-9 designating every March as NATIONAL WOMEN'S HISTORY MONTH; and

WHEREAS, the National Park Service is designating and preserving sites in commemoration of the contributions made by women to this country's glorious past; and

WHEREAS, the State of New Jersey has designated March as NATIONAL HISTORY MONTH and the New Jersey Department of Community Affairs is responsible for the coordination of events celebrating this special area of our history:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby designates March as WOMEN'S HISTORY MONTH in the Township of Irvington and it commends all of the many contributions made by women to the past, present and future of Irvington and it calls upon all the citizens of Irvington to join in celebration of the past and the contemplation of the wonderful future; and

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Women's History Month, 2021.

Adopted

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Frederic - Beasley 3. Authorize Use of Public Buildings As Polling Places for 2021 Election Cycle

BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, NEW JERSEY that the following public buildings are hereby authorized for election purposes for the Local School Board, Primary and General Elections during the year 2021:

| WARD | DISTRICT | LOCATION |
|------|----------|---------------------------------------|
| East | 2 & 3 | Shelter House, Parkway Playground |
| East | 4 | Grove Street Firehouse |
| West | 8 | Shelter House, 40th Street Playground |

Adopted

Frederic - Vick 4. Authorize Service Agreement to Repair of Two Ravo Street Sweepers – Northeast Sweepers – January 1, 2021 to December 31, 2021 - \$78,000.00

AUTHORIZE SERVICE AGREEMENT TO REPAIR SOLE SOURCE RAVO STREET SWEEPER

WHEREAS, Public Works leased two Ravo Street Sweepers to clean various streets in the Township; and

WHEREAS, the maintenance and repair agreement does not include routine repairs and collusion damage; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5(1)(d)(d), parts and services can only be purchased from Northeast Sweepers, 20 Montesano Road, Fairfield, NJ 07004

WHEREAS, the Administration would like to request a sole source exemption for parts and service of the two Ravo Street Sweepers; and

WHEREAS, the Administration will like to award a contract to Northeast Sweepers, 20 Montesano Road, Fairfield, NJ 07004 for an amount not to exceed \$78,000.00

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Irvington in the County of Essex, and State of New Jersey, that Public Works is authorized to purchase parts and service from Northeast Sweepers, 20 Montesano Road, Fairfield, NJ 07004 starting on January 01, 2021 until December 31, 2021 for an amount not to exceed \$78,000.00.

BE IT FURTHER RESOLVED that the required certification of availability of funds C2100016 in the amount of \$78,000.00 from account number 1-01-21-165-165-299 has been obtained from the Chief Financial Officer.

Adopted

Burgess - Frederic 5. Authorize Purchases Over The Pay To Play Threshold Of \$17,500.00

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But Under The Bid Threshold Of \$44,000.00 For Rental Of Safety
Equipment For The Fire Department - 911 Safety Equipment - \$19,000.00

**AUTHORIZING PURCHASES OVER THE PAY TO PLAY THRESHOLD OF \$17,500.00 BUT
UNDER THE BID THRESHOLD OF \$44,000.00 FOR RENTAL OF SAFETY EQUIPMENT
FOR THE FIRE DEPARTMENT**

WHEREAS, the Township wishes to rent safety equipment for the Fire Department and the total rental will exceed the pay to play threshold; and

WHEREAS, the Township has obtained three quotes from 911 Safety Equipment LLC, Turnout rental and Firefighter One LLC herein attached; and

WHEREAS, 911 Safety Equipment LLC has provided the lowest quote for this service; and

WHEREAS, in compliance with 19:44a-20.13 et., seq., 911 Safety Equipment LLC will exceed the Pay-to-Play threshold of \$17,500.00 for calendar year 2021; and,

WHEREAS, 911 Safety Equipment has completed and submitted the Township C-271, elect reports and political disclosure forms. These forms are on file in the Division of Purchasing Office and the Municipal Clerk; and

WHEREAS, all purchases to the above vendor will not exceed the bid threshold of \$44,000.00; and

NOW, THEREFORE, BE IT RESOLVED, that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to rent safety equipment from 911 Safety Equipment of 9 South Forrest Avenue, Suite #200, Norristown, PA 19401 in excess of pay to play threshold \$17,500.00 but under the bid threshold of \$44,000.00; and

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2021

BE IT FURTHER RESOLVED a separate resolution will be submitted to the Municipal Council for all addition vendors exceeding the bid threshold of \$17,500.00.

BE IT RESOLVED that the required certification of availability of funds C210040 in the amount of \$19,800.00.00 from account number 1-01-25-265-121 has been obtained from the Chief Financial Officer

Adopted

Frederic - Hudley 6. Authorize Purchases Over the Public Bidding Threshold of \$44,000.00
Through The Essex County Cooperative Purchasing Agreement For
Tipping Fees – Advanced Enterprises Recycling, Doing Business As Dart
– \$550,000.00

**AUTHORIZING PURCHASES UNDER THE ESSEX COUNTY CO-OP OF NEW JERSEY
COOPERATIVE PURCHASING PROGRAM OVER THE BID THRESHOLD OF \$44,000.00**

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WHEREAS, the Township of Irvington, pursuant to N.J.S.A. 40A: 11-12(a) and N.J.A.C. 5:34-7.29(c) may by resolution and without advertising for bids, purchase any goods or services under the Essex County Cooperative Purchasing Program on behalf of their members; and,

WHEREAS, Essex County Co-op has awarded solid waste transfer fee for type 13 solid waste to Advanced Enterprises Recycling DBA Dart; and,

WHEREAS, Advanced Enterprises Recycling DBA Dart located at 60 Nelson Place, 6th Floor, Newark, NJ 07102 will exceed the bid threshold of \$44,000.00 for calendar year 2021; and

WHEREAS, based on the estimated tonnage, the total amount that will be paid to this vendor is an amount not to exceed \$550,000.00 for the year; and

WHEREAS, the Township of Irvington intends to enter into this contract with Advanced Enterprises Recycling DBA Dart over the bid threshold of 44,000.00 through this resolution and properly executed purchase orders for disposal of type 13 solid waste for an amount not to exceed \$550,000.00.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Irvington authorizes the purchasing agent to pay this vendor over the bid threshold of \$44,000.00 pursuant to all the conditions of Essex County Co-op contract; and

BE IT FURTHER RESOLVED, that the total payments to this vendor for calendar year 2021 shall not exceed \$550,000.00

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2021

BE IT FURTHER RESOLVED that the required certification of availability of funds, C2100033 1 in the amount of \$100,000.00 was obtained from the Chief Financial Officer from account number 1-01-32-465-465-118 and the remaining balance of \$450,000.00 will be certified upon the adoption of the 2021 budget.

BE IT FURTHER RESOLVED a separate resolution will be submitted to the Municipal Council for all addition vendors exceeding the bid threshold of \$44,000.00.

Adopted

Beasley – Evans 7. Authorize Emergency Contract For Payroll Services - Balance Point – \$50,000.00 to June 30, 2021

RESOLUTION TO AWARD AN EMERGENCY CONTRACT FOR PAYROLL SERVICE

WHEREAS, the Township is need of Payroll service to process payroll for employees, and;

WHEREAS, Balance Point of 65 Harristown Road, Heritage Plaza II, Suite 208, Glen Rock, NJ 07452 was called and used to process bi-weekly payrolls, and;

WHEREAS, this situation constitutes a threat to public welfare and the Mayor has declared an emergency to award a six months contract to our existing vendor, and;

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WHEREAS, the Administration has declared an emergency in writing for service for Balance Point of 65 Harristown Road, Heritage Plaza II, Suite 208, Glen Rock, NJ 07452 to continue to provide payroll service until June 30, 2021 for an amount not to exceed \$50,000.00, and;

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it ratifies the decision of the Mayor to authorize an emergency contract in the amount of \$50,000.00 to provide payroll service to the Township until June 30, 2021.

BE IT FURTHER RESOLVED that the required certification of availability of funds C2100003 in the amount of \$18,333.32 for three months of service was obtained from the Chief Financial Officer from account number 1-01-20-130-130-256 and the remaining balance of \$31,666.68 will be certified upon the adoption of the 2021 budget.

Adopted

Frederic - Beasley 8. Authorize Use of \$19,700.00 In HUD Homeowner Housing
Rehabilitation Funds – 68 Coolidge Street

RESOLUTION FOR HOME REHABILITATION PROGRAM

WHEREAS, the Township of Irvington has been awarded HOME Partnership Funds by the Department of Housing and Urban Development (HUD) and it has obligated funds for the purpose of financing its HOMEOWNER Housing Rehabilitation Program administered by the Department of Economic Development and Grants Oversight; and

WHEREAS, the Township of Irvington, Department of Economic Development and Grants Oversight has identified that the applicant, Anita Wells and whose address is 68 Coolidge Street Irvington, New Jersey, 07111 is eligible to receive assistance through the HOMEOWNER Housing Rehabilitation Program per the Township's policies and procedures; and

WHEREAS the Contractor selected through a competitive BID to perform the Rehabilitation work is CID Construction Service LLC. and said funds shall be disbursed to the Contractor for the benefit of the applicant; and,

WHEREAS, the Department of Economic Development and Grants Oversight has contacted all the contractors on resolution number EDGO 21-0111-2 and two contractors provided quotes for the required work and the other three contractors did not provide any submission before the deadline; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington does ratify and approve the provision of HOMEOWNER Housing Rehabilitation funds to the applicant(s) in the amount not to exceed \$19,700.00 for a period of affordability of ten (10) years; and

BE IT FURTHER RESOLVED that the aforesaid funds of \$19,700.00 will be disbursed in three (3) installments in the amount of \$6566.67 each installment after review of work performed and proof of funds expended to facilitate the Rehabilitation; and

BE IT FURTHER RESOLVED that the aforesaid funds are to be used for the rehabilitation of the subject property and related soft cost associated with the rehabilitation of the subject property as set

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forth in Exhibit A (Scope of Work), attached hereto for the premises known as, 68 Coolidge Street New Jersey 07111, 2 family unit(s) and owned by Anita Wells; and

BE IT FURTHER RESOLVED that any such funds not expended in the rehabilitation and related soft cost associated with the rehabilitation of the subject property in accordance with adopted policy and procedures shall be recaptured by the TOWNSHIP OF IRVINGTON for use in assisting other HUD/HOME Program applicant(s); and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Fund Req. No. C2100037 in the amount of \$19,700.00 for the above has been obtained from the Chief Financial Officer of the Township of Irvington. The appropriation to be charged for this expenditure is Account No. T-21-41-850-21A- 801 in the amount of \$19,700.00.

Adopted

Beasley – Hudley 9. Authorize Acceptance of \$124,000.00 Grant For Rental Assistance, Security Deposit, Utility Assistance and Case Management Under The Social Services for the Homeless (SSH/TANF) Program - January 1, 2021 – December 31, 2021

WHEREAS, The County of Essex, acting through its Department of Citizens Services, Division of Community Action proposes to enter into a sub grant agreement with Irvington Neighborhood Improvement Corporation to provide Rental Assistance, Security Deposit, Utility Assistance and Case Management under the Social Services for the Homeless (SSH/TANF) Program at a contract price of \$124,000 for the period of January 1, 2021 – December 31, 2021; and

WHEREAS, said grant agreement has been negotiated by the County Executive of Essex County and presented to the Board of Chosen Freeholders for Its approval: and

BE IT FURTHER RESOLVED that the Mayor of the Township of Irvington be and hereby is authorized to execute a Grant Agreement with the Essex County Division of Community Action as sub-recipient of Social Services for the Homeless funds in the amount of \$124,000.00

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington does hereby accept the award of \$124,000.00 for such activities.

Adopted

Frederic – Vick 10. Award Professional Services Contract For A Sanitary Sewer Collection System Operator Based on Requests For Proposals - MVC Unlimited, LLC - \$10,800.00

**RESOLUTION TO AWARD A PROFESSIONAL SERVICES CONTRACT FOR A
SANITARY SEWER COLLECTION SYSTEM OPERATOR**

WHEREAS, the regulations of the New Jersey Department of Environmental Protection (NJDEP) require that a licensed sanitary sewer collection system operator, with a grade of C-4 for a municipality with the present population of the township, be employed to prepare monthly reporting and provide technical advise in the operation of the sanitary sewer system and;

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WHEREAS, the Township presently does not have anyone within its employ who possess the necessary license, and;

WHEREAS, the NJDEP has issued an order to the Township that such an individual be employed by the Township, and;

WHEREAS on February 17, 2021 proposals were received to provide this service and only one proposal was received from the firm of MVC Unlimited, LLC, and

WHEREAS the prosomal that was received on February 17, 2021 was reviewed and found that this firm that possesses the expertise and the proposal from the firm of MVC Unlimited, LLC was found to be the most cost effective proposal at a rate of \$ 900 per month, for an annual contract amount of \$10,800.00.

NOW, THEREFORE, BE IT RESOLVED BY MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a professional services contract in the amount of \$10,800.00 be awarded to MVC Unlimited, LLC for an annual contract to provide licensed sewer collection system operator services.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Availability of Funds No. C 2100041 for the above has been obtained from the Chief Financial Officer of the Township of Irvington and the appropriation is to be charged for this expenditure in the amount of \$10,800.00 and should be charged to Account No. 1-01-21-165-165-299.

Adopted

Vick - Hudley 11. Award Professional Services Contract For Engineering Services Required To Prepare The Plans And Specifications And Administer The Construction Of The 2021 Transportation Trust Fund Program Based Upon Quotations - T & M Associates - Total Amount Of \$39,500.00, \$17,765.00 For Design Services And \$21,735.00 For Construction Administration

RESOLUTION TO AWARD A PROFESSIONAL SERVICES CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES FOR THE 2021 TRANSPORTATION TRUST FUND PROGRAM

WHEREAS, the Township of Irvington applied for and received a grant from the New Jersey Department of Transportation (NJDOT) as part of the Transportation Trust Fund in the amount of \$927,711.00; and

WHEREAS, the engineering services required to prepare the plans and specifications and administer the construction of this project are beyond the capabilities of current township staff, the Township Engineer prepared a Request for Quotes that was distributed to the township's engineering consultants; and

WHEREAS, five of these consultants submitted quotes for these services, with those results being summarized in a memorandum from the Township Engineer dated 2/1/21; and

WHEREAS, the Township Engineer had reviewed these proposals and recommends that the proposal of T & M Associates, in the total amount of \$39,500.00 (\$17,765.00 for design services and \$21,735.00 for construction administration) was the most cost efficient proposal to complete the work on this project.

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NOW, THEREFORE, BE IT RESOLVED BY MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for professional services for the engineering services for the 2021 Transportation Trusts Fund Program is awarded to T & M Associates at their proposed price not to exceed \$39,500.00.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Availability of Funds No. C2100036 for the above work has been obtained from the Chief Financial Officer of the Township of Irvington and the appropriation to be charged for this expenditure is in the amount of \$39,500.00 is Account No. G-02-xx-865-21A-299.

Adopted

Frederic – Beasley 12. Award Bid - Construction Of The 2019 Transportation Trust Fund Project - Your Way Construction – Low Bid of \$1,315,485.97

RESOLUTION TO AWARD A CONTRACT FOR THE CONSTRUCTION OF THE 2019 TRANSPORTATION TRUST FUND PROJECT

WHEREAS, the Township of Irvington applied for and received a grant from the New Jersey Department of Transportation (NJDOT) as part of the 2019 Transportation Trust Fund Program; and

WHEREAS, the engineering services required to prepare the plans and specifications and administer the construction of this project were prepared by Keller & Kirkpatrick (now operating as Greenmen Pedersen, Inc) and those plans and specifications were publicly advertised and the receipt of bids for this project was scheduled for February 17, 2021; and

WHEREAS, on February 17, 2021, four bids for this project were received by the Purchasing Committee with lowest responsible bidder determined to be Your Way Construction of Irvington, NJ at their bid price of \$1,315,485.97; and

WHEREAS, the Township Engineer had reviewed these proposals and recommends that the bid of be Your Way Construction of Irvington, NJ be accepted as the lowest responsible bidder at their bid price of \$1,315,485.97; and

NOW, THEREFORE, BE IT RESOLVED BY MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for the construction of the 2019 Transportation Trust Fund resurfacing project be awarded to be Your Way Construction of Irvington, NJ at their bid price of \$ 1,315,485.97; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Availability of Funds No. C2100043 for the above work has been obtained from the Chief Financial Officer of the Township of Irvington and the appropriation to be charged for this expenditure is in the amount of \$1,315, 485.97 is Account No. G-02-xx-865-19A-299.

Adopted

Frederic - Hudley 13. Ratify Appointment of Alberto L. Garcia, Jr.as Local Fire Official

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WHEREAS, the Irvington Fire Department has a vacancy in the office of the “Local Fire Official” and the State Division of Fire Safety requires that this position be filled according to N.J.A.C. 5:71-2.7(a) by a resolution of the governing body appointing the “Local Fire Official”:

WHEREAS, the Mayor has nominated Alberto L. Garcia, Jr. for this position for advice and consent of the Municipal Council:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the nomination of Alberto L. Garcia, Jr. as “Local Fire Official” is hereby confirmed by the Municipal Council; and

BE IT FURTHER RESOLVED that Alberto L. Garcia, Jr. is hereby appointed as the “Local Fire Official” of the Township of Irvington, effective immediately, and expiring on June 30, 2022.

Adopted

Beasley – Frederic 14. Authorize Use of \$35,000.00 In HUD Homeowner Housing
Rehabilitation Funds – 98 Coolidge Street

RESOLUTION FOR HOME REHABILITATION PROGRAM

WHEREAS, the Township of Irvington has been awarded HOME Partnership Funds by the Department of Housing and Urban Development (HUD) and it has obligated funds for the purpose of financing its HOMEOWNER Housing Rehabilitation Program administered by the Department of Economic Development and Grants Oversight; and

WHEREAS, the Township of Irvington, Department of Economic Development and Grants Oversight has identified that the applicant, Laverne Brown and whose address is 98 Coolidge Street Irvington, New Jersey, 07111 is eligible to receive assistance through the HOMEOWNER Housing Rehabilitation Program per the Township’s policies and procedures; and

WHEREAS the Contractor selected through a competitive BID to perform the Rehabilitation work Majaraj General Contracting, LLC, and said funds shall be disbursed to the Contractor for the benefit of the applicant; and,

WHEREAS, the Department of Economic Development and Grants Oversight has contacted all the contractors on resolution number EDGO 21-0111-2 and two contractors provided quotes for the required work and the other three contractors did not provide any submission before the deadline; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington does ratify and approve the provision of HOMEOWNER Housing Rehabilitation funds to the applicant(s) in the amount not to exceed \$35,000.00 for a period of affordability of ten (10) years; and

BE IT FURTHER RESOLVED that the aforesaid funds of \$35,000.00 will be disbursed in three (3) installments in the amount of \$11,666.67 each installment after review of work performed and proof of funds expended to facilitate the Rehabilitation; and

BE IT FURTHER RESOLVED that the aforesaid funds are to be used for the rehabilitation of the subject property and related soft cost associated with the rehabilitation of the subject property as set

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forth in Exhibit A (Scope of Work), attached hereto for the premises known as, 98 Coolidge Street New Jersey 07111, 1 family unit(s) and owned by Laverne Brown; and

BE IT FURTHER RESOLVED that any such funds not expended in the rehabilitation and related soft cost associated with the rehabilitation of the subject property in accordance with adopted policy and procedures shall be recaptured by the TOWNSHIP OF IRVINGTON for use in assisting other HUD/HOME Program applicant(s); and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Fund Req. No. C2100042 in the amount of \$35,000.00 for the above has been obtained from the Chief Financial Officer of the Township of Irvington. The appropriation to be charged for this expenditure is Account No. T-21-41-850-21A- 801 in the amount of \$35,000.00.

Adopted

Hudley - Frederic 15. Accept Grant Award Of \$10,000.00 From The New Jersey Department Of Law And Public Safety Office Of The Attorney General Enhance The Emergency Management Program

WHEREAS, on October 1, 2020, the New Jersey Department of Law and Public Safety Office of the Attorney General has made funding available through the Irvington Township of Emergency Management for the Department of Public Safety to enhance their Emergency Management Program; and

WHEREAS, the OEM Coordinator, John F. Brown, of the Township of Irvington has agreed in accordance with grant award, Subaward Number: FY20-EMPG-EMAA-0709, Emergency Management Performance Grant-EMPG/Emergency Management Assistance-EMAA, that funds shall be used to enhance the Emergency Management Program and shall be aligned with the scope for approved Department of Public Safety activities; and

WHEREAS, said assistance is to be utilized for the subaward period from July 1, 2020, through June 20, 2021, and is designated for the Irvington Department of Public Safety Division to enhance the Emergency Management Program and the funds will be used for said purposes:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Mayor be and is hereby authorized to accept funding from the New Jersey Department of Law and Public Safety Office of Attorney General to enhance the Emergency Management Program and the funds will be used for Emergency Management purposes in the amount of \$10,000.00 from July 1, 2020 through June 30, 2021; and

BE IT FURTHER RESOLVED it is understood that the award has a No Match Requirement.

Adopted

Burgess - Cox 16. Authorize Transfers of Funds

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CY - 2020

Where As, NJSA 40A:4-58, allows appropriation transfers during the last two(2) months of the fiscal year and the first three(3) months of the preceding fiscal year;
Now, Therefore, Be It Resolved by the Township Council of the Township of Irvington that the following transfer be made in the CY 2020 Budget effective 12/31/20, as detailed in the following schedule:

| | From | To |
|-------------------------------|-------------------|-------------------|
| Accounts | | |
| <i>Within "CAP"</i> | | |
| | 35,000.00 | - |
| Emergency Management S& W | | |
| Elections O & E | 86,000.00 | - |
| Tax Assessor S & W | 7,500.00 | - |
| Township Attorney S & W | 35,000.00 | |
| Township Attorney O & E | 25,000.00 | - |
| BA O & E | 50,000.00 | - |
| Purchasing S & W | 40,000.00 | - |
| School Guards S & W | 100,000.00 | - |
| Fire S & W | 150,000.00 | - |
| Fire O & E | - | 71,200.00 |
| Engineering O & E | 25,000.00 | - |
| Land Dumping & Refuse | - | 693,950.00 |
| Snow Removal S & W | 83,039.09 | - |
| Snow Removal O & E | - | 83,039.09 |
| Public Building O & E | 19,000.00 | - |
| Motorized Equip O & E | 15,000.00 | - |
| Community Planning O & E | 12,750.00 | - |
| Public Event | 13,900.00 | - |
| Housing Services O & E | 10,000.00 | - |
| Construction Code S & W | 17,000.00 | - |
| Municipal Court S & W | 90,000.00 | - |
| Public Defender S & W | 25,000.00 | - |
| Recreation O & E | 9,000.00 | |
| - | | - |
| SUB-TOTAL INSIDE CAPS | 848,189.09 | 848,189.09 |
| OUTSIDE CAPS: | | |
| - | | - |
| - | | |
| SUB-TOTAL OUTSIDE CAPS | - | - |
| GRANT TOTAL | 848,189.09 | 848,189.09 |
| - | | |

Adopted

Burgess - Cox 17. Authorize Temporary Emergency Appropriation to Extend the Calendar Year 2021 Temporary Budget

TOWNSHIP OF IRVINGTON EMERGENCY TEMP BUDGET #1 APPROPRIATIONS WITHIN "CAPS" CY-21

| APPROPRIATIONS WITHIN "CAPS" | |
|-------------------------------------|-------------------------------|
| CY-21 | |
| | |
| OFFICE OF THE MAYOR | <i>Emerg Budget #1</i> |
| Mayor's Office: | |
| Salaries and Wages | 128,261.50 |
| Other Expenses | 25,000.00 |
| Irvington Mental Health Center: | - |
| Other Expenses | 1,500.00 |
| Planning Board: | - |
| Salaries and Wages | 5,026.83 |
| Other Expenses | 4,316.67 |
| Office of Emergency Management: | - |

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| | |
|---|-------------------|
| Salaries and Wages | 5,833.33 |
| Other Expenses | - |
| Community Planning & Development | - |
| Salaries and Wages | 22,536.33 |
| Other Expenses | 8,333.33 |
| Total Office of the Mayor | 200,808.00 |
| OFFICE OF THE TOWNSHIP CLERK | |
| Township Clerk's Office: | |
| Salaries and Wages | 69,567.50 |
| Other Expenses | 9,000.00 |
| Elections: | - |
| Salaries and Wages | 2,500.00 |
| Other Expenses | 1,930.00 |
| Council's Office: | - |
| Salaries and Wages | 53,853.67 |
| Other Expenses | 8,333.33 |
| Board of Adjustment: | - |
| Salaries and Wages | 9,026.83 |
| Other Expenses | 3,433.33 |
| Rent Leveling Board: | - |
| Salaries and Wages | 8,333.33 |
| Other Expenses | - |
| Total Office of the Township Clerk | 165,978.00 |
| OFFICE OF THE TAX ASSESSOR | |
| Municipal Tax Assessor: | |
| Salaries and Wages | 31,533.33 |
| Other Expenses | 3,416.67 |
| Total Office of the Tax Assessor | 34,950.00 |
| ATTORNEY TO TOWNSHIP COUNCIL | |
| Legislative Research Officer: | |
| Salaries and Wages | 7,833.33 |
| Other Expenses | 266.67 |
| Total Attorney to Township Council | 8,100.00 |
| OFFICE OF THE TOWNSHIP ATTORNEY | |
| Township Attorney: | |
| Salaries and Wages | 97,803.14 |
| Other Expenses | 63,107.33 |
| Total Office of the Township Attorney | 160,910.47 |
| DEPARTMENT OF ADMINISTRATION | |
| Office of the Business Administrator: | |
| Salaries and Wages | 112,916.67 |
| Other Expenses | 42,450.00 |
| Other Expenses - Postage | - |
| Total Department of Administration | 155,366.67 |
| DEPARTMENT OF POLICE | |
| Police: | |
| Salaries and Wages | 3,536,953.08 |
| Other Expenses | 208,218.09 |
| APPROPRIATIONS WITHIN "CAPS"(continue) | - |
| School Guards: | - |
| Salaries and Wages | 120,650.67 |
| Other Expenses | 83.33 |
| Chaplains and Surgeons: | - |
| Salaries and Wages | 416.67 |
| Parking Division: | - |

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| | |
|---|---------------------|
| Other Expenses | 83.33 |
| Total Department of Police | 3,866,405.16 |
| <u>DEPARTMENT OF FIRE</u> | |
| Fire: | |
| Salaries and Wages | 1,951,423.33 |
| Other Expenses | 96,166.67 |
| Uniform Fire Safety | - |
| Salaries and Wages | 1,666.67 |
| Other Expenses | 833.33 |
| Total Department of Fire | 2,050,090.00 |
| <u>DEPARTMENT OF REVENUE AND FINANCE</u> | |
| Division of Finance: | |
| Salaries and Wages | 107,991.67 |
| Other Expenses: | - |
| Administration of Finance | 25,816.67 |
| Auditing | - |
| Insurance: | - |
| General Liability | 343,750.00 |
| Workers Comp | 339,166.67 |
| Employers Group Health | 2,867,500.00 |
| Division of Revenue-Tax Collection: | - |
| Salaries and Wages | 73,125.83 |
| Other Expenses | 11,166.67 |
| Division of Licenses: | - |
| Salaries and Wages | 23,517.50 |
| Other Expenses | 1,333.33 |
| Division of Central Purchasing: | - |
| Salaries and Wages | 55,546.67 |
| Other Expenses | 4,883.33 |
| Total Department of Revenue and Finance | 3,853,798.33 |
| <u>DEPARTMENT OF PUBLIC WORKS</u> | |
| Division of Engineering: | |
| Salaries and Wages | 118,688.23 |
| Other Expenses | 45,166.67 |
| | - |
| Land Rental, Refuse Dumping: | - |
| Other Expenses | 899,333.33 |
| Division of Streets and Sewers: | - |
| Salaries and Wages | 179,389.17 |
| Other Expenses | 62,500.00 |
| Snow Removal: | - |
| Salaries and Wages | 93,675.00 |
| Other Expenses | 229,540.00 |
| Division of Motorized Equipment: | - |
| Salaries and Wages | 30,980.33 |
| Other Expenses | 43,333.33 |
| Division of Public Property: | - |
| Salaries and Wages: | - |
| Public Buildings | 170,711.85 |
| Shade Tree | 40,066.66 |
| Other Expenses: | - |
| Public Buildings | 52,500.00 |
| Shade Tree | 9,166.67 |
| Total Department of Public Works | 1,975,051.25 |

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| | |
|---|-------------------|
| DEPARTMENT OF HEALTH AND WELFARE | |
| Division of Health: | |
| Salaries and Wages: | |
| Health Administration | 68,405.37 |
| Environmental Health | 32,083.33 |
| Nursing | 2,147.83 |
| Other Expenses: | - |
| Health Administration | 5,000.00 |
| Environmental Health | 19,133.33 |
| Nursing | 200.00 |
| Senior Citizen Center: | - |
| Salaries and Wages | 32,666.67 |
| Other Expenses | 1,500.00 |
| Total Department of Health and Welfare | 161,136.54 |
| DEPARTMENT OF PARKS AND RECREATION | |
| Division of Park Maintenance: | |
| Salaries and Wages | 113,739.29 |
| Other Expenses | 71,000.00 |
| Division of Recreation: | - |
| Salaries and Wages | 53,150.00 |
| Other Expenses | 9,666.67 |
| Public Events and Celebration: | - |
| Other Expenses | - |
| Irvington Municipal Pool: | - |
| Salaries and Wages | - |
| Other Expenses | - |
| Total Department of Parks and Recreation | 247,555.96 |
| DEPARTMENT OF HOUSING | |
| Housing Services: | |
| Salaries and Wages | 104,333.33 |
| Other Expenses | 2,750.00 |
| Total Department of Housing Services | 107,083.33 |
| MUNICIPAL COURT | |
| Municipal Court | |
| Salaries and Wages | 244,180.33 |
| Other Expenses | 20,943.33 |
| Total Municipal Court | 265,123.67 |
| PUBLIC DEFENDER | |
| Public Defender | |
| Salaries and Wages | 13,333.33 |
| Other Expenses | 1,083.33 |
| Total Public Defender | 13,333.33 |
| UNIFORM CONSTRUCTION CODE | |
| Construction Code Official: | |
| Salaries and Wages | 80,808.33 |
| Other Expenses | 2,916.67 |
| Total Construction Services | 83,725.00 |
| UNCLASSIFIED | |
| Utilities: | |
| Electricity, Gas | 108,333.33 |
| Telephone and Telegraph | 98,333.33 |
| Telephone Lease System | 8,333.33 |
| Fire Hydrants | 86,666.67 |
| Water | 10,833.33 |

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| | |
|---|----------------------------|
| Gasoline | 48,333.33 |
| Street Lighting | 125,000.00 |
| Prior Year Salary Adjustments | - |
| Emergency Dispatch Services (Transportation) | 30,833.33 |
| Tax Appeals' | - |
| Total Unclassified | 516,666.67 |
| Total Operations Within "CAPS" | 13,866,082.37 |
| Deferred Charges & Statutory Expenditures | |
| Social Security System (OASI) | 291,666.67 |
| State Unemployment Insurance Fund | 51,666.67 |
| Fund Administrative Cost | - |
| Public Employees Retirement System | 1,450,922.26 |
| Police & Firemen's Retirement System | 6,839,729.87 |
| DCRPS | 16,750.00 |
| Judgments | - |
| Deferred Charges Grants Over | - |
| Expenditures W/O Approp. | - |
| Grant Expenditures W/O Approp. | - |
| Deferred Charges - WC & GL | - |
| Cash Deficit Preceding Year | - |
| Total Deferred Charges & Statutory Exp | 8,650,735.46 |
| Total Appropriations Within "CAPS" | 22,516,817.83 |
| APPROPRIATIONS EXCLUDED FROM "CAPS" | |
| <u>OTHER OPERATIONS</u> | |
| Joint Sewer Maintenance | 779,204.67 |
| Maintenance of Free Public Library | 204,233.33 |
| 911 Dispatch Services | 37,500.00 |
| | - |
| Total Other Operations | 1,020,938.00 |
| | |
| <u>APPROPRIATIONS EXCLUDED from "CAPS"(continue)</u> | |
| <u>FEDERAL AND STATE GRANTS</u> | |
| Community Services Block Grant 20-22 | - |
| HPOWA Grant 20- 2023 | - |
| Clean Communities Funds | - |
| | |
| Total Grants | - |
| | |
| Total Operations Excluded from "CAPS" | <u>1,020,938.00</u> |
| | |
| <u>MUNICIPAL DEBT SERVICE</u> | |
| Down Payment on Capital Improvements | - |
| Capital Improvement Fund | - |
| Payment of Bond Principal | - |
| Interest on Bonds | - |
| Payment of Note Principal | - |
| Interest on Notes | - |
| Green Trust Loan Program: | - |
| Payment of Principal and Interest | - |
| Payment of Principal and Interest-2003 | - |
| Payment of Principal & Interest 727 GTP | - |
| Demolition Loan Repayment | - |
| NJ Environmental Infrastructure Trust Loan Principal & Interest | - |
| Deferred Charges - Emergency Auth 5 Yr | - |
| County Lease | - |
| Total Municipal Debt Service | - |

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| | |
|--|-----------------------------|
| | |
| Total Appropriations Excluded from "CAPS" | |
| for Municipal Purposes | 1,020,938.00 |
| | |
| <u>TYPE ONE SCHOOL DEBT</u> | |
| Payment of Bond Principal | - |
| Interest on Bonds | - |
| Total Type One School Debt | - |
| | |
| Total Appropriations Excluded from "CAPS" | 1,020,938.00 |
| | |
| Reserve for Uncollected Taxes | - |
| | |
| Total General Appropriations | <u>23,537,755.83</u> |

Adopted

10. Communication and Petitions

A. Communications

1. Essex County Board of Commissioners – Salary Ordinance – Board of Commissioner Employees

11. Pending Business

None

NON-CONSENT AGENDA ITEMS

B. Ordinances on Second Reading

1. President Burgess: An small cell wireless ordinance will be heard at this time. The Clerk will read the notice of hearing.

The Clerk read the notice of hearing.

The Clerk will read the ordinance by title.

IRVINGTON TOWNSHIP SMALL CELL WIRELESS ORDINANCE

AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF CHAPTER 650 ZONING OF THE CODE OF THE TOWNSHIP OF IRVINGTON WITH THE ADDITION OF A NEW SECTION ENTITLED "TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY"

STATEMENT OF PURPOSE: The purpose of this Ordinance is to provide for reasonable regulations concerning the placement of small cell wireless facilities within the Township, consistent with state and federal law through the implementation of a right-of-way approval and permitting procedure.

WHEREAS, the Township of Irvington ("Township") is aware that the telecommunications industry is rapidly developing and there is a strong desire among telecommunications companies to look

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for areas within municipalities for the placement of small cell wireless facilities, herein known as “small cells,” “5G towers” and “personal wireless service facilities” by accessing rights-of-way within municipalities; and

WHEREAS, the rights-of-way are municipal properties and provide a valuable resource to its citizens by permitting the public to travel freely over and across these designated properties without unreasonable encroachments or interference; and

WHEREAS, the Township recognizes that the use of these properties must be managed carefully with the utmost consideration given to general welfare and best interest of its citizens; and

WHEREAS, the Federal Telecommunications Act (TCA) preserves a local government’s ability to “manage the public rights-of-way...on a competitively neutral and non-discriminatory basis” (47 U.S.C. §253 (c)); and

WHEREAS, the TCA further preserves a local government’s authority over the “placement construction and modification of personal wireless service facilities” (47 U.S.C. §332(c)(7)(A)); and

WHEREAS, the TCA makes it unlawful for a local government to prohibit or have the effect of prohibiting the provisions of personal wireless service (47 U.S.C. 332(c)(7)(B)(i)(II)); and

WHEREAS, the TCA provides that municipalities “shall not unreasonably discriminate among providers of functionally equivalent services” (47 U.S.C. §332(c)(7)(B)(i)(I)); and

WHEREAS, recent developments in wireless technology, specifically the development of 5G technology, involve the placement of small cells, cabinets and equipment in municipal rights of-way; and

WHEREAS, pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 48:17-10 New Jersey municipalities must give consent before a small cell including a small antenna can be placed on existing poles or new poles erected within public rights-of-way; and

WHEREAS, the erection of new poles and ground level cabinets in the public right-of-way raises aesthetic and safety concerns including, but not limited to, concerns related to sight triangles and other safety related issues; aesthetic concerns and safety concerns associated with the use of roadways by the public such as the public’s ability to pass and repass over same, and; the impact on the streetscape and character of residential neighborhoods; and

WHEREAS, pursuant to regulations adopted by the Federal Communications Commission (“FCC”), in order to ensure the safety of its citizens and preserve the aesthetic quality of the Township, the Township may impose regulations on related infrastructure including, but not limited to, small cells, all poles, antennas and cabinets located on municipal rights-of-way provided such aesthetic requirements and/or restrictions are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advanced; and

WHEREAS, the TCA further provides that municipalities may “require fair and reasonable compensation” from telecommunications providers for the use of the public right-of-way, provided said compensation is applied on a “competitively neutral and nondiscriminatory basis” among providers, and if said compensation is “publicly disclosed”, per 47 U.S.C. 253(c); and

WHEREAS, the FCC adopted an Order entitled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,” (FCC-18-133A or “Carr’s Order”), which was upheld

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for the most part by the Ninth Circuit Court of Appeals on August 12, 2020 concerning City of Portland et al. vs. the FCC; and

WHEREAS, in pertinent part, Carr's Order 1) establishes safe harbors for fees that municipalities can charge for one-time event application processing as well as recurring fees for right-of-way access, which are presumed acceptable under TCA; 2) provides that one-time fees and recurring fees, or rates, above the safe harbor levels may be imposed, and are not considered an effective prohibition of service within the meaning of the TCA (47 U.S.C. 253(c)) provided such fees are a reasonable approximation of actual costs, and the costs themselves are objectively reasonable, and non-discriminatory; and 3) places 60 and 90 day shot clock time limits on the municipal decision making process for applications for the placement of small wireless facilities, the replacement of existing poles and the placement of new poles in the public right-of-way; and

WHEREAS, the Township has determined the most efficient way to effectuate this process is to set forth clear standards in relation to the positioning of poles, cabinets and antennas for the benefit of its citizens and any utilities that use or seek to make use of Irvington's rights-of-way safely, and to require all technology companies seeking to use municipal rights-of way for the purpose of erecting telecommunication equipment apply for and be granted permits and, furthermore, pay the permitted fees, which may change from time to time, in accordance with legal thresholds established by the FCC, state and federal laws and court orders; and,

WHEREAS, the Township has recommended that such additional provisions be mandatorily imposed within the Township of Irvington's Code as part of the anticipated telecommunication development of municipal rights-of-way; and

WHEREAS, the current antenna code, Chapter 650 Wireless Telecommunications Towers and Antennas is intended to govern macro cell sites on rooftops and freestanding towers and, thus, is insufficient to govern the unique circumstances and requirements of small cell facilities in the rights-of-way; and

WHEREAS, this Ordinance is limited to the installation of facilities in the public rights-of-way and shall have no effect on the installation of wireless telecommunications facilities and antennas on private lands pursuant to Chapter 650 sections 650-95 through 650-101 Wireless Telecommunications Antennas and Towers; and

WHEREAS, the FCC Broadband Deployment Advisory Committee (BDAC) formed a Model Code for Municipalities Working Group and, in July 2018, published a Model Code for Municipalities for Small Wireless Facilities deployments. This model code is generally compliant with the Telecommunications Act, and FCC declaratory rulings and orders issued in 2009, 2014 and shortly thereafter in 2018. Thus, a municipality that adopts this code substantially in its original form will be in compliance with Federal laws and FCC guidelines for cell site deployments; and

WHEREAS, this Ordinance utilizes the FCC Model Code for Municipalities template to ensure compliance with Federal law and FCC regulations; and

WHEREAS, the Township acknowledges that there may already exist a number of small cell facilities in the public rights-of-way that were approved under terms and conditions that would not be in compliance with this proposed ordinance; and

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WHEREAS, in the event of any inconsistencies between this Ordinance and any agreements, licenses or franchises in existence, which govern said existing small cell facilities, the provisions of this Ordinance shall control, and shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Township and parties in said licenses and agreements;

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the Township of Irvington that the Code be amended as follows:

Section 1

Chapter 650 Zoning of the Code of the Township of Irvington is hereby amended, supplemented and revised with the addition of a new article entitled “Article XVI Telecommunications Facilities in the Public Right-of-Way”, which shall read, in its entirety, as follows:

Heading: ARTICLE XVI – TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Section 650-102

Table of Contents

Section 1 Short Title, Purpose and Definitions

650-102-1 Short Title

650-102-2 Purpose

650-102-3 Definitions

Section 2. Governance of Deployment in the Public ROW

650-103-1 General Provisions of Agreement for Access to Public ROW

650-103-2 Permitted Communications Facility Uses/Administrative Review; Application

650-103-3 Action on Administrative Review Applications

650-103-4 Applications Requiring Discretionary Review and Approval

650-103-5 Other Public ROW Installation Requirements

650-103-6 Attachment to and Replacement of Decorative Poles

650-103-7 Batch Applications

650-103-8 Design Standards

Section 3 Miscellaneous Provisions

650-104-1 Preexisting Sites.

650-104-2 New Jersey One Call

650-104-3 “Dig Once” Requirements

650-104-4 Violation of this Article

650-104-5 Governance of Deployments Outside of the Public Right-of-Way.

650-104-6 Waiver

650-104-7 Wireless Consultant Contact Information

Commented [p11]: Adjusted the section numbering format to better align with Irvington’s code organizing conventions

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650-104-8 Effective Date

Section 650-102-1 Short Title, Purpose and Definitions

650-102-1 Short Title.

This Article is titled the “Telecommunications Facilities in the Public Right-of-Way”, and amends all applicable provisions of the Code of the Township of Irvington, and any existing local laws, rules, orders, resolutions and ordinances relating to the subject matter of this Article.

650-102-2 Purpose.

It is the intent of this Article to regulate the placement of telecommunications equipment, including poles, towers, antennas and other infrastructure located on Municipal Rights-of-Way. The placement of telecommunications equipment outside of the Municipal Right-of-Way shall be governed by Chapter 650 Wireless Telecommunications Antennas and Towers.

It is furthermore intended that this Article shall control in the event of any inconsistency between the provisions of this Article and any existing agreements, licenses or franchises in existence and which govern existing Small Wireless Facilities in the Municipal Right-of-Way, and that the prevailing terms of this Article shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Township and the applicable parties in said licenses and agreements.

650-102-3 Definitions.

- a. “Administrative Review” means ministerial review of an Application by the Township relating to the review and issuance of a Permit, including review by the Designee, a wireless consultant with knowledge beyond the expertise of Township personnel, as well as the Construction Official, Zoning Officer, Director of Public Works, engineer, or other Township staff or designees to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Article. Administrative permit issuance is non-discretionary and based on whether an application is in conformity with the provisions of this Article, as well as any other applicable local, state and federal laws and regulations governing small cell deployment. This process does not involve the exercise of discretion.
- b. “Antenna” means communications equipment that transmits and/or receives over-the-air electromagnetic 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.
- c. “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 Township or otherwise are applicable in the jurisdiction.
- d. “Applicant” means a Person or entity who submits an Application under this Article.
- e. “Application” means a written request submitted by an Applicant to the Township for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Support Structure, Pole, or Tower, or (ii) to construct, modify or Replace a new Support

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Structure, Pole or Tower or any other structure on which a Communications Facility will be Collocated.

- f. “Collocate” means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. “Collocation” has a corresponding meaning. The term does not include the installation of a new Pole, Tower or Support Structure in the Public Right-of-Way.
- g. “Communications Facility” means, collectively, the equipment at a fixed location or locations that enables communication between user equipment and a communications network, 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. A Wireless Facility is an example of a Communications Facility.
- h. “Communications Service Provider” means a cable operator, as defined in 47 U.S.C. §522(5), a provider of information service, as defined in 47 U.S.C. §153(24); or a provider of telecommunications service, as defined in 47 U.S.C. §153(53); or provider of fixed wireless or other wireless services as defined in 47 U.S.C. §332(c)(7)(C)(i). A Wireless Service Provider is an example of a Communications Service Provider.
- i. “Contract for Professional Services” means a contract through which the Township has entered into an arrangement with an individual, attorney consultant or firm for same to provide professional consulting services pursuant to this Section, said contract being in conformance with New Jersey Public Contracts Law, Pay-to-Play Laws and other applicable laws governing such contracts and agreements. The Contract between the Designee and the Township is an example of a Contract for Professional Services.
- j. “Decorative Pole” means a Township Pole that is specially designed and placed for aesthetic purposes.
- k. “Deployable” means a portable, self-contained Wireless Facility that can be moved to a specified location or area and provide Wireless Services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.
- l. “Designee” means Hoplite Communications, LLC, appointed by the Township and contracted for professional services to serve as the point-of-contact and primary consultant and specialist for the Township for all matters concerning this Article. Hoplite contact information- Office address: Hoplite Communications, LLC, 197 Route 18, Suite 3000, East Brunswick, NJ 08816. Phone: 732-207-3912. Email: Peter.lupo.hoplite@gmail.com.
- m. “Discretionary Review” means review of an Application by the Township relating to the review and issuance of a Permit, that is other than an Administrative Review. Discretionary Review involves discretion on the part of the Township (subject to any applicable limits on such discretion) in determining whether to issue a Permit and may be subject to one or more public hearings or meetings, including appearances before the planning board, zoning board of adjustment and referral to the Historic Preservation Commission for commentary and recommendations. Discretionary review may be subject to provisions of Chapters 365 Land Use

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Procedures, 560 Subdivision and Site Plan Review and 650 Zoning, as well as other applicable provisions as determined by the applicable governing authority.

- n. “Eligible Facilities Request” means an eligible facilities request as set forth in 47 C.F.R. Section 1.6100(b)(3), as may be amended from time to time.
- o. “FCC” means the Federal Communications Commission of the United States.
- p. “Fee” means a one-time, nonrecurring charge, whether a fixed amount or cost- based amount based on time and expense.
- q. “Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C) or established pursuant to state historic preservation law.
- r. “Laws” means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- s. “Occupant” means any occupant of the Public Right-of-Way, including any Wireless Provider, Wireless Infrastructure Provider, utility company, or public or private entity with a physical presence or right to maintain a physical presence on, under or across the Public Right-of-Way.
- t. “Ordinary Maintenance, Repair and Replacement” means (i) with respect to a Communications Facility and/or the associated Support Structure, Pole or Tower, inspections, testing, repair and modifications that maintain functional capacity, aesthetic and structural integrity, and (ii) with respect to a Communications Facility only, the replacement of Antennas and/or other components of the Communications Facility (specifically, such as a swap out of small cell Antennas and radio equipment as required by the Applicant), with Antennas and/or other components substantially similar, in color, aggregate size and other aesthetics to that previously permitted by the Township (and/or consistent with the same height and volume limits for Wireless facilities under this Section), so long as the Support Structure, Pole, or Tower will structurally support, or prior to installation will be modified to support, the structural load. Modifications are limited to by the structural load analysis supplied by the Applicant to the Township, and by the volume limits in Section 650-103-8 Design Standards.
- u. “Permit” means a written authorization (in electronic or hard copy format) required by the Township to initiate, continue, or complete the installation, upgrade or modification of a Communications Facility, or an associated Support Structure, Pole, or Tower.
- v. “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Township.
- w. “Pole” means a pole, such as a utility, lighting, traffic, or similar pole, made of wood, concrete, metal or other material, located or to be located within the Public Right of Way or Utility Easement. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached unless the Township grants a waiver for such pole. The term does not include electric transmission poles or structures. A Pole does not include a Tower or Support Structure.
- x. “Provider” means a Communications Service Provider or a Wireless Provider.

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- y. “Public Right of Way”, “Public ROW” or “Municipal ROW” 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, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the municipality.
- z. “Rate” means a recurring charge.
- aa. “Replace” or “Replacement” means, in connection with an existing Pole, Support Structure or Tower, or Communications Facility, as the case may be, to replace (or the replacement of) same with a new structure, similar in design, size and scale to the existing structure and in conformance with current Township building code, zoning provisions and other applicable regulations, in order to address limitations of, or change requirements applicable to, the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.6100 (b)(7).
- bb. “Small Wireless Facility” means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna (including, without limitation, any strand-mounted 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 facility is cumulatively no more than twenty eight (28) cubic feet in volume. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services. The following additional parameters apply to Small Wireless Facilities: (i) Total height of Small Wireless Facility and supporting structure is less than 50 feet, or the Small Wireless Facility is mounted on structures no more than 10% taller than adjacent structures, or the Small Wireless Facility does not extend the existing structure to a height of greater than 50 feet or by more than 10% of the original height, whichever is greater.
- cc. “State” means the State of New Jersey.
- dd. “Support Structure” means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower.
- ee. “Tower” means any structure built for the sole or primary purpose of supporting a Wireless Facility, such as a self-supporting Tower, a monopole, a lattice Tower or a guyed Tower. Tower also includes a structure designed to conceal from the general public the Wireless Facility. A Tower does not include a Pole or a Support Structure.
- ff. “Township” means the Township of Irvington, or any agency, department, district, subdivision or any instrumentality thereof, including, but not limited to public utility districts, or municipal electric utilities. The term shall not include courts of the State having jurisdiction over the Township or any entities that do not have zoning or permitting authority or jurisdiction. The Township may hereinafter be referred to as the “Township”, “the Township of Irvington”, or “Irvington”.
- gg. “Township Pole” means a Pole owned, managed or operated by or on behalf of the Township.

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- hh. “Utility Easement” means the area on, below, or above privately-owned property that has been designated for use as or is used for a specific utility purpose (such as for electric, cable or other utility purpose), and is evidenced by a recorded instrument in the public land records pursuant to a recorded plat, easement or right of way or is otherwise a legally enforceable easement, and does not include any portion of a Public Right of Way.
- ii. “Wireless Facility” means a Communications Facility installed and/or operated by a Wireless Provider. 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 example of a Wireless Facility.
- jj. “Wireless Infrastructure Provider” means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider.
- kk. “Wireless Provider” means a Wireless Infrastructure Provider or a Wireless Services Provider.
- ll. “Wireless Services” means any wireless services including, without limitation, personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i).
- mm. “Wireless Services Provider” means a Person who provides Wireless Services.

Section 2 Governance of Deployment in the Public ROW

650-103-1 General Provisions of Agreement for Access to the Public ROW

- a. Applicability. Except as otherwise provided herein, the placement, installation, modification, replacement, repair and upgrade of any Communications Facilities, including Small Wireless Facilities, as well as the associated Poles, Towers or Support Structures, in the Public Right-of-Way shall be governed by this Article.
- b. Notice Prior to Any Non-Emergency Work.
 - i. Designee. The Designee will serve as the initial point of contact for the Township for all matters pertaining to this Section.
 - ii. Notice Required. No action, application, installation, alteration, upgrade, replacement or upgrade, maintenance, repair, replacement or, modifications by Applicant contemplated by this Section shall be commenced without first giving notice to the Township Designee.
 - iii. This notice requirement ~~pertains to all work~~does not pertain to, including ordinary maintenance, repairs, ~~upgrades~~ and like-for-like equipment swap outs that do not increase the dimensions or electromagnetic profile of the Small Wireless Facility.-This work may be performed without giving notice to the Designee.
 - iv. Emergency Work. Work that is of an urgent and immediate nature, such as a network outage or an imminent safety hazard, shall not be required to meet the notice provisions of this subsection, subject only to providing notice to the Designee as soon as is practicable for the emergency work either about to be performed, currently underway or having been performed, and then providing a brief summary of the work completed, including the replacement or removal of any components of the applicable Small

Commented [pl2]: Advance notice not required for emergency work. Just notice after the fact and a summary of work performed. Administrative review only required if the work winds up being more extensive than maintenance style emergency work

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Wireless Facility or Facilities. Any such emergency work shall be subject to Administrative Review, after the fact, only if the nature and scope of said work exceeds that which may be reasonably construed as maintenance and repair work. The below terms and conditions utilized for Notice for Ordinary Maintenance shall govern after-the-fact review for emergency work in these instances.-

- v. Notice for Ordinary Maintenance. Advance notice to the Designee is required for ordinary maintenance and repairs. As noted in section (iii) above, notice to the Designee is not required for ordinary maintenance and repairs. However, Designee reserves the right to inspect Applicant's Small Wireless Facilities at any time in order to determine if the existing configuration matches the configuration contained in the most recently issued Small Cell Permit, and any applicable Right-of-Way Agreement and the attached schedules. Applicant shall bear no costs for said inspections. However, if it is determined that an existing Small Wireless Facility is found to be larger than the dimensions specified in the most recently issued applicable Small Cell Permit, then Applicant shall be in violation of this Ordinance pursuant to section 650-104-4. Applicant shall receive notice from the Township and, upon receipt of such notice, be required to restore the site within ten (10) days to the configuration of the most recently approved Small Cell Permit or Removed or retroactively apply for Administrative Approval for the unapproved modifications. In such instances, Applicant will be responsible for costs and fees incurred by the Township Designee to perform inspections and review. Applicant shall provide a summary of the proposed work along with any available specification sheets or diagrams. The Designee will review the proposed work to determine whether it is, in fact, Ordinary Maintenance or if it is something more extensive in nature that requires Administrative Review. If it is determined that the proposed work constitutes Ordinary Maintenance, then the Applicant may proceed without the need for full Administrative Review, subject only to the Designee review fee to arrive at a determination of Ordinary Maintenance. This amount shall be limited to one (1) hour total review time at the Designee's hourly rate.
- c. Municipal Agreement. Prior to receiving a Permit to install one or more Communications Facilities in the Public ROW, each Applicant shall be required to enter into a Municipal Agreement (e.g., Right of Way Access Agreement, Pole Attachment Agreement, License Agreement) between the Township and the Applicant, on terms and conditions substantially the same for all Applicants and existing Occupants of the Public ROW. The terms and conditions of such Municipal Agreement will include the following:
 - i. Fees and Rates. As consideration to the Township for entering into the Municipal Agreement and also as a condition precedent for the issuance of any required permits and approvals to install the applicable Communications Facilities in the public right-of-way, the Applicant shall pay the required fees and rates as set forth in Schedule A of this Section, and which may be amended or modified from time to time per revision and modification to local, state and federal laws and regulations. Said fees shall include Application or One-Time fees and Recurring Right-of-Way Occupancy Rates.
 - ii. The Small Cell Permit Application Escrow, as described in Schedule A, shall be paid upon submission of an Application and shall be held in escrow and billed against actual incurred One-Time Fees and costs to process an Application, also as described below and

Commented [pl3]: Abbreviated notice and review process. Notice and a brief review of SOW to determine if it constitutes maintenance as typically understood. If so, work may proceed without further approvals.

Commented [pl4]: See here and Schedule A for the escrow model. The Escrow establishes a completed application. No need to determine precise fees in advance.

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in Schedule A of this Section. If said Small Cell Permit Application Escrow is insufficient to cover incurred One-Time Fees as described below and in Schedule A, then any amount in excess of the escrow shall be invoiced to Applicant directly upon completion.

(a) Reasonable Approximation: All one-time event fees will be a reasonable approximation of objectively reasonable costs.

(b) One Time Fees Apply to All Work: One-time fees and event fees apply to the initial installation of facilities as well as to any subsequent upgrade, replacement, modification or alteration of same, with each instance of an upgrade or repair being a separate project subject to One-Time Fees.
~~Ordinary maintenance and repairs does not trigger any One-Time Fees. Maintenance and repair work on an existing Communications Facility does not trigger any One Time Fees other than those fees incurred pursuant to Designee determination review, per section 605-103-1(b)(v).~~

- A. Annual ROW Occupancy Rate shall be as specified in Schedule A of this Section and shall be paid within thirty (30) days of the issuance of the applicable Permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the Term. However, under no circumstances shall the Rate be remitted later than ninety (90) days after the full execution of the applicable Municipal Agreement between Township and Applicant.
- B. Annual Attachment Rate, equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Township for the attachment of each Small Wireless Facility to Township-owned structures in the Public Right-of-Way. This amount shall be paid within thirty (30) days of issuance of the applicable Permit(s) and annually thereafter. The annual rates in 650-102-2.1(c)(A) and (B) combined shall not exceed \$270 annually per Small Wireless Facility location.
- C. All Fees and Rates will be applied in a non-discriminatory manner to all Communications Service Providers.
- D. Make-Ready Fee, shall be determined on a site-specific, engineering basis, for work reasonably necessary to make a particular Township Pole suitable for attachment of the applicable Communications Facility shall be paid upon submission of the Application as more particularly described in Subsection 650-103-3(e) below.

d. Other Terms.

- i. Term. Unless otherwise agreed to in writing by the Township and Applicant, the Agreement term shall be ten (10) years.
- ii. Safety and Accessibility. The Applicant will demonstrate compliance with applicable safety and accessibility requirements, including those under Americans with Disabilities Act (“ADA”), OSHA and similar laws.
- iii. The Municipal Agreement shall include, as an appendix thereof, a schedule containing the location of all proposed Small Wireless Facilities in the Public Right-of-Way, which

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the Township and Applicant may update as necessary without the need for additional review. Said locations shall be as specific as possible and shall include, but not be limited to, latitude, longitude, the nearest proximate address, cross streets as well as lot and block numbers, if available. Applicants shall also provide for inclusion in the Municipal Agreement information indicating the horizontal and approximate vertical location, relative to the boundaries of the Public ROW, of all equipment which it owns or over which it has control and which is located in any Public Right-of-Way.

- iv. **RF Safety Reports.** Applicant shall provide, as part of the initial request to install Small Wireless Facilities via Municipal ROW Agreement and any associated Application, a copy of a health and safety report evidencing compliance with FCC requirements concerning electromagnetic radiation emissions. Along with any Application to modify, enhance or add equipment to a Small Wireless Facility that alters that facility's electromagnetic emissions profile, Applicant will provide an updated health and safety report which reflect the most recent electromagnetic emissions levels.

Commented [pl5]: Updated so that an RF safety report is only needed upon initial install and for any equipment change that alters the RF emission profile. Not required on random whims.

- v. Indemnification and Insurance Requirements.

Insurance. The Applicant shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The Applicant may use any combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non- contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by the Applicant. Prior to the commencement of any work pursuant to this **Ordinance Agreement**, the Applicant shall file with the Township, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Township shall notify Applicant within fifteen (15) days after the receipt of any claim or demand to the Township, either by suit or otherwise, made against the Township on account of any of Applicant or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this **Ordinance Agreement**. Applicant shall notify the Township Clerk within fifteen (15) days of receipt of any claim or demand of Applicant or its subcontractors, agents, employees, officer, servants, designees, guests or invitees by any aggrieved party for any work or action made pursuant to this Ordinance

Indemnification. Applicant, its successors, assigns, contractors, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Township, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Applicant's actions under this **Ordinance Agreement** and costs in connection therewith except to the

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extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the Township, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Township in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Applicant's activities pursuant to the rights granted in this Ordinance Agreement. This indemnification shall also specifically include that the Township retains the right to choose its own defense counsel in regard to any action at law or equity pursuant to this section.

- vi. Reliable 24/7 Emergency Notification Contact Information will be provided by the Applicant to the Township and incorporated into the Agreement.
- vii. Additional Agreement Terms: Additional terms, such as for termination, assignment and sublicensing rights, shall be as negotiated between the Applicant and Township.
- viii. Nondiscriminatory. Applications will be processed on a nondiscriminatory basis.

650-103-2 Permitted Communications Facility Uses/Administrative Review; Application

- a. Permitted Use. The following uses within the Public ROW shall be a permitted use, subject to the entering into of a Municipal Agreement between Applicant and Township as set forth in Section 650-103-1(c) above, and Administrative Review and the issuance of a Permit as set forth in this Section 650-103-2. All such uses shall be in accordance with all other applicable provisions of this Article, including without limitation, those set forth in Section 650-103-5 below.
 - (i) Collocation of a Small Wireless Facility.
 - (ii) Collocation that qualifies as an Eligible Facilities Request.
 - (iii) Modification of a Pole, Tower or Support Structure or Replacement of a Pole, for Collocation of a Communications Facility that qualifies as an Eligible Facilities Request or involves a Small Wireless Facility that does not exceed the maximum limitations set forth in Section 650-103-8 below.
 - (iv) Construction of a new Pole or a monopole Tower (but no other type of Tower) to be used for Collocation of a Small Wireless Facility that does not exceed the maximum height and other applicable design standards set forth in this Section.
 - (v) Construction of a Communications Facility, other than those set forth in subparagraphs (i), (ii) or (iii) in this Subsection 650-103-2(a), involving the installation of coaxial, fiber-optic or other cabling, that is installed underground (direct buried or in conduit) or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
 - (vi) Any upgrade, replacement, modification or alteration of a Communications Facility, with each instance of alteration, modification or upgrade being a separate instance subject to Administrative Review.
 - (vii) The Township reserves and retains the general right to subject any installation or modification contemplated in this Article to Discretionary Review subject to the 60 and

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90 day Shot Clock guidelines specified in FCC-18-133A. This may include public hearings and zoning board of adjustment approval. The Shot Clock guidelines will be adhered to for any Discretionary Review process unless compelling and extraordinary circumstances suggest otherwise.

- (viii) All other installations, modifications and replacements not subject to Administrative Review and that do not qualify as a Permitted Use are subject to Discretionary Review under Chapter 650 Zoning and 365 Land Use Procedures.
- b. Permit Required. No Person shall place any facility described in Subsection 650-103-2(a) above in the Public ROW without first filing an Application for Administrative Review for same and obtaining a Permit thereof, except as otherwise expressly provided in this Article.
- c. Proprietary or Confidential Information in Application. The Township shall make accepted Applications publicly available by reasonably available means such as a request pursuant to the Open Public Records Act (“OPRA”). 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 Township shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” Laws and the Township’s determination that the Applicant’s request for confidential or proprietary treatment of an Application material is reasonable. Confidential and proprietary information shall not include any information which is by law, regulation, ordinance, OPRA procedure and regulations or this Section, open and available for public inspection, including proposed Communications Facilities’ site locations.
- d. Administrative Review Application Requirements. The Application shall be made by the applicable Wireless Service Provider or its duly authorized representative and shall contain the following:
 - (i) The Applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
 - (ii) 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.
 - (iii) A general description of the proposed work and the purposes and intent of the proposed facility or facilities. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
 - (iv) Detailed construction drawings regarding the proposed facility, as required by the Uniform Construction Code of the State of New Jersey, or as otherwise stated and required under applicable Township ordinances.
 - (v) Demonstration of compliance with RF health and safety measures, as established by the TCA and FCC, via an RF Health and Safety Report. Applicant may utilize the RF Safety Reports provided in connection with the

Commented [pl6]: RF report used for MLA may be reused for general permit application for initial installation of facilities. The general process in a nutshell: Initial: MLA → Application → Permit // Modifications: Notice → Application → Permit

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Municipal Agreement per section 650-103(c) for the subsection for Administrative Review and Permit issuance

- (vi) Applicant shall demonstrate compliance with the Section 650-103-8 Design Standards as they pertain to appearance, siting and height of the proposed Communications Facilities and their support poles, towers or other structures.
- (vii) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a qualified 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.
- e. Applicant shall demonstrate compliance with applicable environmental, historical and landmark laws, rules and regulations, including SHPO and NEPA approval, as needed or applicable, including obtaining any necessary permits and approvals from the appropriate local, state or federal department agency or other governing body.

~~f. Ordinary Maintenance, Repair and Replacement. Ordinary maintenance and repairs shall be governed in accordance with section 650-103-1(b)(v) of this Article, including notification to the Designee of any proposed maintenance or repairs. If it is determined that proposed maintenance work is not subject to Administrative Review, then said maintenance work may still require coordination with the Township DPW and Police Department for necessary street closures and safety protocols, as each is applicable.~~

Commented [pl7]: Refers back to controlling maintenance provision in Notice section.

~~fg.~~ Information Updates. Any material change to information contained in an Application shall be submitted in writing to the Township within thirty (30) days after the condition necessitating the change.

~~gh.~~ **Application Fees.** Unless otherwise provided by applicable Laws, all Applications pursuant to this Section shall be accompanied by the escrow amounts required under section 650-103-1(c)(ii) above which shall be used to cover One-Time Fees associated with application review and processing, and for which amounts in excess of the escrow shall be billed directly to the Applicant.

Commented [pl8]: Refers back to escrow provisions

650-103-3 Action on Administrative Review Applications

- a. Review of Applications for Administrative Review.
 - (i) The Township shall review the Application in light of its conformity with applicable provisions of this Article, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:
 - (A) The Township must act consistent with the following Shot Clock Dates:
 - (i) Review of an Application to collocate a Small Wireless Facility using an existing structure: 60 days.
 - (ii) Review of an Application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
 - (iii) Review of an Application to deploy a Small Wireless Facility using a new structure: 90 days.

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(iv) Review of an Application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(B) Tolling period: Unless a written agreement between the Applicant and the Township provides otherwise, the tolling period for an Application (if any) is as set forth in paragraphs (1) through (3) of this section:

(1) For an initial application to deploy Small Wireless Facilities, if the Township notifies the Applicant on or before the 10th day after submission that the Application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the Applicant submits all the documents and information identified by the Township to render the Application complete.

(2) For all other initial Applications, the tolling period shall be the number of days from--

(i) The day after the date when the Township notifies the Applicant in writing that the Application is materially incomplete and clearly and specifically identifies the missing documents or information that the Applicant must submit to render the Application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the Applicant submits all the documents and information identified by the siting authority to render the Application complete;

(iii) But only if the notice pursuant to paragraph (B)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted Applications following a notice of deficiency, the tolling period shall be the number of days from--

(i) The day after the date when the Township notifies the Applicant in writing that the Applicant's supplemental submission was not sufficient to render the Application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Township's original request under paragraph (B)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the Township to render the Application complete;

(iii) But only if the notice pursuant to paragraph (B)(3)(i) of this section is effectuated on or before the 10th day after the date when the Applicant makes a supplemental submission in response to the Township's request under paragraph (B)(1) or (2) of this section.

- (iv). Final Decision by Township. The Township must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including referencing specific code provisions and/or regulations upon which the denial was based, including any federal law, or local or state laws and regulations, provided said local and state laws and regulations do not conflict with federal law. Denial may include lack of conformity with the Township codes, ordinances and regulations, as well as local, state and federal environmental, landmark and historical regulations. A decision to deny an application shall be in writing and supported by clear evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by the Township. The review period or "shot clock" shall run until the written decision, supported by substantial evidence, is released and sent to the Applicant contemporaneously. The subsequent review by the Township shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies
- b. Undergrounding Provisions. The Township shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the Township and all Public ROW Occupants to minimize disruption or discontinuance of service of all kinds to consumers, through mutual

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obligation to coordinate and timely complete such projects. An Occupant, including the Applicant, as the case may be, shall comply with nondiscriminatory Township undergrounding requirements that 1) are in place and published prior to the date of initial filing of the Application, and 2) prohibit electric, telecommunications and cable providers from installing above-ground horizontal cables, Poles, or equivalent vertical structures in the Public ROW; and the Township may require the removal of overhead cable and subsequently unused Poles. In areas where existing aerial utilities are being moved underground, Wireless Providers shall retain the right to remain in place, under their existing authorization, by buying out the ownership of the Pole(s), subject to the concurrence of the Pole owner and consent of the Township (which consent may not be unreasonably withheld, conditioned or delayed) or, alternatively, the Wireless Service Provider may reasonably replace the existing Pole(s) or vertical structure locations for Antennas and accessory equipment, as a permitted use, within 50 feet of the prior location, unless a minimally greater distance is necessary for compelling public welfare. In neighborhoods or areas with existing underground utilities that do not have Small Wireless Facilities deployed as a permitted use, a new entrant Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures in the neighboring underground utility area. In neighborhoods or areas with existing underground utilities that do have Small Wireless Facilities deployed as a permitted use, a new entrant Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures of Wireless Providers in the neighboring underground utility area. In neighborhoods with underground utilities, whether being converted from overhead utilities or initially underground, microwireless devices, typically strand-mounted, shall be treated like other Small Wireless Facilities in the Public ROW, requiring Administrative Review permitted use status, and subject to non-recurring and recurring Fees and Rates.

c. Effect of Permit.

- (i) Authority Granted; No Property Right or Other Interest Created. A Permit from the Township authorizes an Applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant to the Applicant to impinge upon the rights of others who may already have an interest in the Public ROW.
- (ii) Duration. Any Permit for construction issued under this Section shall be valid for a period of six (6) months after issuance, provided that the six (6) month period shall be extended for up to an additional six (6) months upon written request of the Applicant, made prior to the end of the initial six (6) month period if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant.

d. Removal, Relocation or Modification of a Communications Facility in the ROW.

- (i) Notice. Within ninety (90) days following written notice from the Township, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility within the

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Public ROW whenever the Township has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Township improvement in or upon, or the operations of the Township in or upon, the Public ROW, or pursuant to any redevelopment plan made pursuant to the Municipal Land Use Law contained in N.J.S.A. 40:55D, or any council resolution that approves any redevelopment plan for work that is performed by a private company other than the Township. The Township shall apply the same standards to all utilities in the Public ROW.

- (ii) **Emergency** Removal or Relocation of Facilities. The Township retains the right and privilege to cut power to or move any Communications Facility located within the Public ROW of the Township, as the Township may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the Township shall notify the Provider and provide the Provider an opportunity to move its own facilities prior to cutting power to or removing the Communications Facility and in all cases shall notify the Provider after cutting power to or removing the Communications Facility as promptly as reasonably possible.
- (iii) Structural reconditioning, repair and replacement. From time to time, the Township may paint, recondition, or otherwise improve or repair the Township Poles in a substantial way (“Reconditioning Work”). The Provider shall reasonably cooperate with the Township to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider’s approved use of the facility.
 - A. Prior to commencing Reconditioning Work, the Township will use reasonable efforts to provide the Provider with at least sixty (60) days prior written notice. Upon receiving that notice, it shall be the Provider’s sole responsibility to provide adequate measures to cover, remove, or otherwise protect the Provider’s Communications Facilities from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. The Township reserves the right to require the Provider to remove all of the Provider’s Communications Facility from the Township Pole and surrounding premises during Reconditioning Work, provided the requirement to remove same is contained in the written notice required by this Subsection. All cost associated with the protection measures, including temporary removal, shall be the sole responsibility of the Provider. The Township will provide the Provider with a date by which its equipment must be protected or removed. The Provider may request a modification of the Township procedures for carrying out Reconditioning Work in order to reduce the interference with Provider’s operation of its Communications Facility. If the Township agrees to the modification, the Provider shall be responsible for all reasonable incremental cost related to the modification.
 - B. If the Township Poles need to be replaced (“Replacement Work”), the Township shall provide Provider with at least sixty (60) days written notice to remove its Communications Facilities. The Township shall also promptly notify Provider when the Township Poles have been replaced and Provider may re-install its equipment. During the Replacement Work, the Provider may maintain a temporary Communications Facility on or nearby in the Public Right-of-Way, with the specific temporary location to be approved by the Township, or on

Commented [pl9]: This is township emergency provisions. Carrier emergency provisions are covered in Notice section

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nearby private property, or on any land owned or controlled by Township, in the vicinity of the property. If alternative locations in the Public Right-of-Way or on nearby public or private property will not accommodate the Provider's temporary Communications Facility or if the parties cannot agree on a temporary location, the Provider, at its sole option, shall have the right to suspend the applicable Permit, until the replacement Pole is installed, upon thirty (30) days written notice to the Township.

C. If the Township Poles need to be repaired due to storm or other damage ("Repair Work"), the Township shall notify the Provider to remove its Communications Facilities as soon as possible. In the event of an emergency, the Township shall contact the Provider by telephone at its emergency contact of record upon or prior to removing the Provider's equipment. Once the Township Poles have been replaced or repaired, the Township will promptly notify the Provider that it can reinstall its equipment. During Township Repair Work, the Provider may maintain a temporary Communications Facility on the Public Right-of-Way or nearby property, subject to approval of the applicable property owner, or after approval by Provider, on any land owned or controlled by the Township in the vicinity of the property. All cost associated with any removal or protection of Communications Facilities shall be the sole responsibility of the Provider, except to the extent caused by third-parties or the Township.

e. Attachment to Township Poles in the Public ROW.

(i) Make-Ready Requirements. For any attachment to Township Poles in the Public ROW, the Township shall provide a good faith estimate for any make-ready work necessary to enable the Township Pole to support the proposed facility, including Replacement of the Pole if necessary, within sixty (60) days after receipt of a completed Application requesting attachment to the Township owned Pole, unless a longer period is required in order to comply with New Jersey law, including, but not limited to, Local Public Contracts Law ("LPCL") and the New Jersey Local Unit Pay to Play. Make-ready work including any Pole Replacement shall be completed within one hundred and twenty (120) days of written acceptance of the good faith estimate by the Provider. Township will make all reasonable estimates to complete the work within the stated timeframes. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the Township. If Township does not indicate it is willing to perform the make-ready work within the sixty (60) days after receipt of a completed Application requesting attachment to the Township Pole, Applicant may perform the work itself consistent with Township approval under this Article.

Commented [pl10]: Applies to township owned structures in the right-of-way

650-103-4 Applications Requiring Discretionary Review and Approval.

a. Discretionary Review Required. All other uses not expressly set forth or referenced in Subsection 650-103-2 above shall require compliance with applicable Township ordinance, including, but not limited to, Chapter 650 Zoning Article XV Wireless Telecommunications Antennas and Towers and the district zoning regulations and any other applicable laws and ordinances of the Township.

650-103-5 Other Public ROW Installation Requirements.

a. General Principles.

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- (i) Reasonable Placement Limitations. The Township shall have the power to establish reasonable and non-discriminatory limitations on the placement of new or additional facilities within specific congested segments of the Public ROW if there is insufficient space to accommodate all of the requests of Applicants or other Persons to occupy and use the Public ROW. In making such decisions, the Township shall to the extent possible accommodate all existing users and potential users (i.e. those who have submitted an Application to deploy facilities within the Public ROW) of the Public ROW, and shall be guided primarily by considerations of the public interest, the width and physical condition of the Public ROW, the time of year with respect to essential utilities, the protection of existing facilities in the Public ROW and established plans for public improvements and development projects which have been determined to be in the public's interest.
- (ii) Fewest Possible New Poles / Use of Existing Poles. In compliance with the Design Standards contained herein, Applicant shall use existing poles when possible for the placement of its Small Wireless Facilities and shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet the coverage and capacity requirements.
- (iii) Leasing of excess space in ducts, conduits and on Poles is a matter between interested parties (subject to any applicable Pole Attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees or licensees of such physical facilities must still comply with the terms of this Article, unless otherwise expressly exempted by the Township.
- (iv) Due Care and Safe Work Practices. An Occupant of the Public ROW shall employ due care during the installation and maintenance process, and comply with all safety and Public ROW-protection requirements of applicable Federal, State and local Laws (and any generally applicable Township guidelines, standards and practices), and any additional commonly accepted safety and Public ROW- protection standards, methods and devices (to the extent not inconsistent with applicable Laws). All facilities on and under the streets of the Township shall be kept and maintained in a safe and well-ordered condition, and in good order and repair. Due care during construction, maintenance and modifications shall include the following:
 - (A) Any Applicant occupying any portion of the Public ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs and lights appropriate to the level of complexity of the activity in order to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic-control plan in accordance with the Manual on Uniform Traffic Control Devices, and existing procedures, including the Township work site evaluation process by which the construction office may refer proposed work to the police department in order to develop safety measures to safeguard pedestrian and vehicular traffic as well as property. In the event of any conflict between the provisions of this subsection and the work site evaluation process, the work site evaluation procedures shall control.

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- (B) Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the Township notifies the Occupant in writing that the Township or the Township's designated contractor is assuming responsibility for traffic control.
- (C) Each Occupant shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the Occupant's field employees and contractors for all job sites within the Public ROW.
- (v) Interference With Existing Facilities. An Occupant of the Public ROW shall not place any fixtures or equipment where the same will interfere with any existing facility, and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.
- (vi) Sharing of Trench Space. In the event that the Township notifies the Occupant in advance that it is expressly interested in sharing the trenches or bores at a specific location area where construction is occurring, then the Occupant shall allow the Township to place its infrastructure in the Occupant's trenches and bores as requested by the Township. In these instances, the Township will bear an incremental share of the costs of trenching, boring and the placement of conduit and infrastructure.
- (vii) Call Before You Dig Provision. Before beginning excavation in any Public ROW, an Occupant shall contact the regional notification center for subsurface installations (One-Number Locator Service) to determine possible conflicts.
- (viii) Abandonment of Facilities.
 - (A) Any Occupant of the Public ROW, including any Applicant, Wireless Provider or Wireless Infrastructure Provider, that intends to permanently discontinue use of any of its Communications Facilities, Poles or Support Structures within the Public ROW shall notify the Township in writing within thirty (30) days prior to abandonment. Such notice shall describe the facilities for which the use is to be discontinued, and the date of discontinuance of use. Upon notification, at its discretion, the Township will choose from the following options within 14 days or any other agreed upon option, and so notify the Occupant of its decision:
 - 1. Abandon the facilities in place and the Occupant shall further convey full title and ownership of such abandoned facilities to the Township. The Occupant will remain responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the Township is completed; or
 - 2. The facilities shall be removed and the Occupant shall be liable for removing the facilities at its own cost. If an Occupant fails to remove facilities that the Township requires it to remove, after ninety (90) days notice to the Occupant, the Township may perform the work and shall be entitled to collect the cost from the Occupant its successors and/or assigns.

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b. Additional Requirements.

- (i) General. All deployments of Communications Facilities in the Public ROW shall comply with the following:
 - (A) Compliance with ADA and other applicable Federal, State and local Laws and standards.
 - (B) Pedestrian and vehicular traffic and safety requirements established by the Township.
 - (C) Existing Public ROW occupancy or management ordinances, not otherwise inconsistent with this Article.
- (ii) Additional Permits. In addition to obtaining a Permit for installation of a Communications Facility in the Public ROW, an Applicant must obtain the following additional permits and approvals, as well as provide notice where indicated:
 - 1. Notification to Township Designee for all work contemplated in this Article, pursuant to Section 650-103-1.
 - 2. Construction Permit (including building and electrical subcodes), per statutory fees established by uniform construction code regulations contained in N.J.A.C. 5:23.
 - 3. Zoning Permit, as applicable, per this Article and the applicable provisions of the Township land use regulations, including Chapter 650 Zoning and 365 Land Use Procedures.
 - 4. Street Opening Permit, if applicable, per Township code Chapter 555 Streets and Sidewalks.
 - 5. Telecommunications Consultation and Review performed by the Designee or other such official of the Township or professional contracted by the Township, to include permit review, construction oversight for code and zoning compliance and post-installation inspection to ensure compliance with the technical specifications.
 - 6. Engineering Review by the Township engineer or outside consultant, as needed or applicable.
 - 7. Discretionary Review: For Small Wireless Facility and Pole applications not subject to Administrative Review pursuant to this Section.

c. Existing Utility Easements in the Public Right of Way.

- (i) Applicants will work with the Township engineer to coordinate and protect existing utilities in the Public ROW.
- (ii) Applicants will coordinate with the Designee and Township engineer, as applicable, to detail all public safety considerations prior to and during installation in the Public ROW to ensure public safety response in the case of gas line, water line or electric Township disturbance.

650-103-6 Attachment to and Replacement of Decorative Poles.

Notwithstanding anything to the contrary in this Article, the Township may request that Applicant install a Small Wireless Facility on a new Decorative Pole, or Replace an existing Pole with a Decorative Pole, or replace an existing Decorative Pole with a new Decorative Pole that is in keeping with the aesthetics of the existing Decorative Pole or the surrounding streetscape only upon satisfaction of the following additional requirements:

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- (i) Issuance of a Permit under Subsection 650-103-2 above.
- (ii) The new Decorative Pole, Small Wireless Facilities attachment and/or the Replacement Decorative Pole is in keeping with the aesthetics of the Decorative Pole and surrounding streetscape in the judgement of the Township.

650-103-7 Batch Applications.

An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Township's approval, batch Application requirements and file a consolidated Application and receive multiple permits or a single Permit for multiple Communications Facilities. The Township's denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The Township shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Article.

650-103-8 Design Standards.

All above-ground Communications Facilities in the Public ROW requiring Administrative Review shall conform to the following non-discriminatory design guidelines:

(A) Siting and Design Requirements:

- a. **Pole Siting Standards.** New Poles for use as support structures for Small Wireless Facilities shall conform to the following siting standards:
 - i. Height. No Proposed Pole shall be taller than fifty (50) feet or 110% of the height of Poles in the surrounding streetscape, whichever is higher. This maximum height includes the Pole and any associated Small Wireless Facility or Antenna.
 - ii. Location, Safety and Aesthetics. No Proposed Pole shall be erected in the Right-of-Way unless it:
 - 1. Is approved pursuant to the provisions of this Article;
 - 2. Replaces an Existing Pole; or
 - 3. Does not inhibit any existing sight triangles or sight distances; and
 - 4. Allows adequate room for the public to pass and re-pass across, along and through the Right-of-Way; and
 - 5. Is finished and/or painted and/or 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.
 - 6. Is compliant with Chapter 555 Streets and Sidewalks of the Township Code as well as any applicable local and state laws and regulations pertaining to the installation of utility pole structures in the right-of-way, including promulgated by the Board of Public Utilities requiring approval of proposed locations prior to installation.
 - iii. **Fewest Poles Possible.** Applicant shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet its coverage and capacity requirements of its client, and shall affirmatively demonstrate that requesting fewer than the requested number would be insufficient to meet said coverage and capacity requirements and comply with any federal or FCC mandates. In addition, to the maximum extent possible while remaining compliant with engineering and

Commented [pl11]: Poles that meet the design parameters are permitted pursuant to an MLA (a/k/a Municipal ROW Agreement) + and Application followed by a Permit (which typically includes BP and street opening permits as part of process for new poles). Poles that fall outside these design guidelines trigger discretionary approval processes.

Commented [pl12]: Generally, carriers should use as few poles as possible while still meeting capacity/coverage goals

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structural requirements, Applicant shall make any proposed Pole available to the maximum number of additional Wireless Providers.

- b. Ground Level Cabinet Siting Standards. Ground level cabinets shall conform to the following siting standards:
 - i. Ground level cabinets are prohibited in the Public Right-of-Way in residential zones and any future residential zones.
 - ii. Ground level cabinets are permitted in non-residential zones provided that such Ground Level Cabinet:
 - 1. Is less than twenty-eight (28) cubic feet in volume; and
 - 2. 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; and
 - 3. Does not inhibit any existing sight triangles or sight distance; and
 - 4. Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
 - 5. Is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility, excluding the Small Wireless Facility for which the Ground Level Cabinet will provide telecommunications functionality.
 - iii. Fewest Ground Level Cabinets Possible: Applicant shall minimize the number of ground mounted cabinets and shall affirmatively demonstrate that any applicable Pole or Support Structure is incapable of supporting the proposed equipment cabinet.
- c. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.
 - i. Pole mounted Antennas are permitted on Existing Poles, provided that each pole mounted antenna:
 - 1. Does not exceed three (3) cubic feet in volume; and
 - 2. Is finished and/or painted and/or 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
 - 3. Does not increase the height of the proposed or existing Pole by 10% or 5 feet, whichever is greater, to a maximum permitted height of 50 feet or 110% of the height of existing Poles in the surrounding streetscape, whichever is greater; and
 - 4. Is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility; and
 - 5. Does not inhibit any sight triangles or sight distance; and
 - 6. Allows adequate room for the public to pass and repass across, along and through the Public Right-of-Way.
 - ii. Pole mounted cabinets are permitted on Existing Poles in all residential zones and non-residential zones provided that each pole mounted cabinet:
 - a. Does not exceed sixteen (16) cubic feet; and
 - b. Is finished and/or painted and/or 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

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- c. Does not inhibit any sight triangles or sight distance; and
 - d. Allows adequate room for the public to pass and repass across the Public Right-of-Way.
- ii. Fewest Small Wireless Facilities Possible. Applicant shall minimize the number of new proposed Small Wireless Facilities in the right-of-way to the fewest possible to meet its coverage and capacity requirements of its client, and shall affirmatively demonstrate that requesting fewer than the requested number would be insufficient to meet said coverage and capacity requirements and comply with any federal or FCC mandates.
- d. Additional Provisions for Small Wireless Facilities on Existing Utility Distribution Poles.
 - i. Small Wireless Facilities, subject to Administrative Review, may be placed in the Public Right of Way on top of existing utility Poles in excess of the height requirements specified in the above Design Standards subject to the following requirements:
 - 1. Each Small Wireless Facility and its associated supporting utility Pole shall not exceed five (5) above the tallest existing Pole or utility Pole within 500 feet in place as of the Application date, or shall not exceed ten (10) feet above same, only if required pursuant to electrical utility pole separate requirements.
 - 2. In no event shall the combined height of the Small Wireless Facility and its associated utility distribution Pole exceed fifty five (55) feet in height.
 - 3. Any proposed height above fifty (50) feet shall be subject to administrative review by the Zoning Board of Adjustment and Planning Board.
 - 4. Discretionary approval is required for any proposed Small Wireless Facility that does not meet the above standards.

Section 3 Miscellaneous Terms

650-104-1 Preexisting Sites and Municipal Agreements.

Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of the provisions of this Article, whether or not a Municipal Agreement exists or is in force and effect with regard to same, shall be required to comply with the provisions of this Article.

Any Municipal Agreements entered into between the Township and any Provider regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Article. To the extent the provisions of any existing Municipal Agreement conflict with this Article, said provisions shall be replaced and superseded by the applicable terms of this Article.

650-104-2 New Jersey One Call

In addition to compliance with the applicable provisions of this Article, prior to the start of any installation of Poles, Support Structures, Small Wireless Facilities or other Communications Facilities that requires excavation, Applicant shall contact New Jersey One Call at 811 at least three (3) full business days prior to the commencement of work.

650-104-3 "Dig Once" Requirements

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For all installations of Communications Facilities and Small Wireless Facilities that require the installation of above ground and underground communications and power cabling and conduit, along the Public ROW as well as utility easements and private property, the Township's Department of Public Works or Construction Office may request that the project developer publicly offer to coordinate with Providers who operate, or have applied for facilities in the Township through the Department of Public Works or other applicable department or agency to ensure the Public ROW and any planned utility easements are adequate to accommodate the deployment of both aboveground and underground Communications Facilities. Specifically, planned utility easements should allow for an adequate number of huts, utility Poles and other structures, as well as belowground conduit, to adequately serve current and anticipated Communications Facilities. Access to easements should be provided to Providers on a non-discriminatory basis and at a reasonable cost, or pursuant to applicable Laws.

650-104-4 Violation of this Article:

Violation of any of the provisions of this Article shall be a simple citation punishable with a civil penalty of \$500 for each violation which continues more than ten (10) days after written notice of such violation is provided to the Applicant. Each day, after such notice, that a violation occurs or is permitted to exist by the Applicant constitutes a separate offense.

650-104-5 Governance of Deployments Outside of the Public Right-of-Way.

This Article is intended to govern the installation, placement, maintenance, modification, upgrade and repair of Communications Facilities, including Small Wireless Facilities, in the Public Right-of-Way. The placement of telecommunications equipment outside of the Public Right-of-Way shall be governed by Chapter 650 Zoning Article XV Wireless Telecommunications Antennas and Towers, as well as by other applicable codes and ordinances of the Township.

650-104-6 Waiver.

The Township Council, or other Township person, agency or department with the authority to do so, may waive any provision or standard set forth in this Article where it is demonstrated that the strict enforcement of said standard:

- (i) Will prohibit or have the effect of prohibiting any 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 in the FCC Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," WT Docket No. 17-79; "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," WC Docket No. 17-84; or
- (iv) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide wireless service to any prospective customer within the Township.

650-104-7 Wireless Consultant Contact Information

As specified in section 650-103-1(b) herein, the Designee shall be the initial point of contact for the Township for all matters concerning this Article.

650-104-8 Effective Date.

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This Ordinance shall take effect twenty (20) days after its adoption by the Township Council.

Schedule A

Schedule A

Commented [pl13]: An attached schedule allows for easy reference and subsequent adjustments as the technology and rollout process evolves over the next 5-10 years.

| One Time Fees* | Rate* | Frequency | Note |
|---|--|--------------------------------------|--|
| Small Cell Permit Application Escrow | \$1000, per new installation or \$500 per alteration, modification or upgrade. To be held in escrow and billed against actual incurred costs per the below schedule of fees: | Per install, modification or upgrade | Escrow to be used against incurred expenses. Any expense amounts above the escrow shall be invoiced to Applicant directly upon completion of work. |
| | | | |
| Construction Permit | Per Section 240-3 | Per install, modification or upgrade | Building/electrical |
| Zoning Permit, if applicable | Per Chapters 365, 650 | Per install, modification or upgrade | Structure/addition |
| Street Opening Permit | \$26 Per Section 555-16 | Per street opening | Excavation to be backfilled and sidewalk relaid/reconstructed in compliance with township specs. |
| Telecommunications Consultation and Review by Township Designee | \$350/hour per agreement | Per install, modification or upgrade | Up to 3 hours/site |
| Engineering Review | Per agreement schedule between the Township and the Township engineer or contracted engineering firm performing engineering services on behalf of the Township | As applicable | |
| | | | |
| Recurring Fees* | | | |
| ROW Access Fee (including attachment fee to Township Pole, if applicable) | \$270 | Annual Access Rate | Per small cell site |

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*The fees described in this Schedule A are the fees in effect at the time of the adoption of this ordinance. All fees are subject to change as existing ordinances are amended and future ordinances adopted and future contracts and agreements entered into and effectuated by resolution. Any amendment, revision or addition to a Township ordinance supersedes any prior inconsistent ordinances.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Vick – Frederic Motion to close public hearing.

Adopted

Vick – Frederic Motion to adopt this ordinance on second reading after public hearing.

Adopted

2. President Burgess: An ordinance establishing fees for various zoning letters will be heard at this time. For the record, this notice is identical to the first notice that was read. The Clerk will the ordinance by title.

AN ORDINANCE ESTABLISHING FEES FOR VARIOUS TYPES OF LETTERS/PERMITS FOR THE ZONING DEPARTMENT

WHEREAS, the Zoning Department’s mission is to promote an orderly pattern of development and to separate incompatible land uses, such as industrial uses and homes, to ensure a pleasant environment; and

WHEREAS, the Zoning Ordinance is a legal guidance used to regulate and establish limits on the use of land and building size, shape, height, and setback; and

WHEREAS, each plot of land within the City’s jurisdiction has a zoning designation — residence, commercial, or manufacturing—to establish relevant parameters for building and land use; and

WHEREAS, the Township continues to as follows: update the Zoning Ordinance as land use patterns change through private and public actions:

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON as follows:

SECTION 1. The following fees are hereby established for various types of Zoning letters as described below.

Type of Letter/Permit Fees

Zoning rebuild letter \$100

All other letters \$125 (Code variation request (per sub code/per variation))

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SECTION 2. All ordinances inconsistent or in conflict with the provisions of the within ordinance are hereby repealed.

SECTION 3. This Ordinance shall take effect upon final passage and publication according to law.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Beasley - Frederic Motion to close public hearing.

Adopted

Beasley - Frederic Motion to adopt this ordinance on second reading after public hearing.

Adopted

3. President Burgess: An ordinance authorizing an amendment to the financial agreement with Chancellor and Union Urban Renewal, LLC for 722 Chancellor Avenue, Block 299, Lot 20 will be heard at this time. For the record, this notice is identical to the first notice that was read. The Clerk will the ordinance by title.

ORDINANCE OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, AUTHORIZING AN AMENDMENT TO THE FINANCIAL AGREEMENT WITH CHANCELLOR AND UNION URBAN RENEWAL, LLC WITH RESPECT TO CERTAIN PROPERTY IDENTIFIED AS BLOCK 299, LOT 20 ON THE TOWNSHIP'S OFFICIAL TAX MAPS, MORE COMMONLY KNOWN AS 722 CHANCELLOR AVENUE

WHEREAS, the Township of Irvington (the “**Township**”) and Chancellor and Union Urban Renewal, LLC (the “**Entity**”) entered into that certain financial agreement dated January 15, 2021 (the “**Initial Agreement**”), pursuant to which the Township granted an exemption from taxation of certain improvements to be constructed upon Block 299, Lot 20, more commonly known as 722 Chancellor Avenue, Irvington, which improvements shall consist of a new affordable housing complex with approximately 56 apartment units (comprised of approximately sixteen (16) one-bedroom units, twenty-four (24) two-bedroom units and sixteen (16) three bedroom units) approximately five of which apartment units shall be set-aside for special needs individuals, approximately 1,600 square foot community space, related residential amenities and associated parking, as more fully described in the Initial Agreement (the “**Project**”) in accordance with the provisions of the Long Term Tax Exemption Law N.J.S.A. 40A:20-1, et seq. (the “**Exemption Law**”) in consideration of the Entity paying to the City an annual service charge for municipal services provided to the Project; and

WHEREAS, the Township and the Entity seek to amend the Initial Agreement to provide that the Entity’s mortgagee can cure a Default in payment of any installment of the Annual Service Charge, or any other municipal charge (the “**Amendment**”); and

WHEREAS, the Mayor has recommended that the Amendment be favorably considered, provided that all legal prerequisites are met; and

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WHEREAS, the Township believes that the enactment of the Amendment, substantially in the form attached hereto as Exhibit A, is in the best interest of the Township; and

WHEREAS, the Township Council now desires to approve the Amendment and to authorize the execution of the proposed form of Amendment in substantially the form attached hereto as Exhibit A, and by this reference incorporated herein, as may be modified in consultation with counsel as set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the Township of Irvington, in the County of Essex, New Jersey, as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. EXECUTION OF AMENDMENT AUTHORIZED

(a) The Mayor is hereby authorized to execute the Amendment, substantially in the form as it has been presented to the Council, and attached hereto as Exhibit A, subject to modification or revision deemed necessary and appropriate by the Township in consultation with counsel.

(b) The Township Clerk is hereby authorized and directed, upon the execution of the Amendment in accordance with the terms of Section II(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.

(c) The Township Clerk shall file certified copies of this Ordinance and the Amendment with the Tax Assessor of the Township in accordance with Section 12 of the Exemption Law.

(d) In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Amendment by the Entity, the Township Clerk shall transmit a certified copy of this Ordinance and the Amendment to the chief financial officer of Union County and to the Union County Counsel for informational purposes.

(e) The Mayor and Township Clerk are hereby authorized to take such action and to execute such other documents, on behalf of the Township, in consultation with counsel, as is necessary to effectuate the terms of the Amendment.

III. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

IV. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance and Amendment shall be available for public inspection at the offices of the Township.

V. EFFECTIVE DATE

This Ordinance shall take effect according to law.

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EXHIBIT A

Form of Amendment

The public hearing on this ordinance is now open.

There were no requests to be heard.

Hudley – Beasley Motion to close public hearing.

Adopted

Hudley – Beasley Motion to adopt this ordinance on second reading after public hearing.

Adopted

ALCOHOLIC BEVERAGE CONTROL BOARD

MARCH 8, 2021

1. Chair Cox calls the Meeting to Order

2. Roll Call

Present: Commissioners Beasley, Burgess, Evans, Frederic, Hudley, Vick, Cox, Chair

Absent: None

3. New Business

Cox - Burgess A. POCKET to PLACE Transfer of Distribution License From Cordier Liquors, Inc. (POCKET) To Cordier Liquors, Inc., 13-29 Cordier Street (PRINCIPAL NOTIFIED TO APPEAR)

WHEREAS, application has been made by Cordier Liquors, Inc., a Corporation, trading as Lyons Discount Liquors, 13-29 Cordier Street, Irvington, N.J. 07111 for the transfer of Plenary Retail Distribution License number 0709-44-056-007 heretofore issued to Cordier Liquors, Inc., a corporation, c/o Pankil Shaw, 20 Woods Lane, Colonia (Woodbridge), N.J., 07067, (INACTIVE LICENSE); and

WHEREAS, the applicant has complied with all applicable State Statutes and Regulations and Chapter 59, Section 21 of the Irvington Revised Code:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL ACTING AS THE ALCOHOLIC BEVERAGE CONTROL BOARD OF THE TOWNSHIP OF IRVINGTON, NEW JERSEY that the application be and the same is hereby granted; that Plenary Retail Distribution License #0709-44-056-007, heretofore issued to Cordier Liquors, Inc., a corporation, c/o Pankil Shaw, 20 Woods Lane, Colonia (Woodbridge), N.J., 07067 (INACTIVE LICENSE), be transferred over and to Cordier

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Liquors, Inc., a Corporation, trading as Lyons Discount Liquors, 13-29 Cordier Street, Irvington, N.J. 07111 and

BE IT FURTHER RESOLVED that the Chief License Clerk is hereby authorized to endorse the aforesaid license over and to Cordier Liquors, Inc., a Corporation, trading as Lyons Discount Liquors, 13-29 Cordier Street,, Irvington, N.J. 07111 in accordance with N.J.A.C. 13:2-7.21.

FEE PAID \$380.00 NEW LICENSE NUMBER 0709-44-056-010

Effective Date: March 8, 2021

The applicant was interviewed by the ABC Board.

Adopted

4. Adjournment

COUNCIL MEETING (RESUMED)

12. Miscellaneous

A. General Hearing of Citizens and Council Members limited to three minutes per person (MUST SIGN UP IN ADVANCE OF MEETING)

There were no requests to be heard.

13. Adjournment

There being no further business, the meeting was adjourned at 7:47 P.M.

Renee C. Burgess, Council President

Harold E Wiener, Municipal Clerk