



AGENDA
February 8, 2022
Council Conference Meeting
7:00 p.m.

APPOINTMENTS

PRESENTATIONS

Historic Preservation Commission

BIDS

RESOLUTIONS

Finance Policy Committee

1. Resolution authorizing the Chief Financial Officer to refund Recreation Department Fees
2. Resolution authorizing the Chief Financial Officer to draw warrants for overpaid taxes for 2020
3. Resolution authorizing the Chief Financial Officer to draw warrants for overpaid taxes for 2021 pursuant to Union County Tax Board
4. Resolution to amend an award of contract for technical upgrades to Council Chambers
5. Resolution to amend an award of contract for professional engineering services
6. Resolution to approve Westfield Memorial Pool Membership rates
7. Resolution to extend contract for Westfield Memorial Pool Concessionaire
8. Resolution authorizing the Chief Financial Officer to sign biweekly warrants for the non-union library employee salaries effective January 1, 2022
9. Resolution authorizing the submission of an application for \$20,000 in funding through PSE&G's Sustainable Jersey Grants Program
10. Resolution to approve 2022 sewer fees
11. Resolution authorizing the Chief Financial Officer to make a budget transfer

Public Safety, Transportation and Parking Committee

Code Review & Town Property Committee

Public Works Committee

1. Resolution authorizing Change Order No. 1 for 2021 Leaf Collection Program (Various Vendors)
2. Resolution authorizing Change Order No. 1 for 2021 Improvement to Willow Grove Road

ORDINANCES

GENERAL ORDINANCE NO. 2022-04

AN ORDINANCE AMENDING CHAPTER 17 OF THE TOWN CODE, RELATING TO POLES, WIRES, AND WIRELESS TELECOMMUNICATION FACILITIES LOCATED WITHIN THE MUNICIPAL PUBLIC WAY OF THE TOWN OF WESTFIELD

GENERAL ORDINANCE NO. 2022-05

AN ORDINANCE AMENDING CHAPTER 24 OF THE TOWN CODE, RELATING TO STREET OPENINGS AND EXCAVATIONS

GENERAL ORDINANCE NO. 2022-06

AN ORDINANCE AMENDING ARTICLE 5, ENTITLED, "FEES, DEPOSITS, GUARANTEES AND OTHER PAYMENTS" OF THE LAND USE ORDINANCE OF THE TOWN OF WESTFIELD

GENERAL BUSINESS

COMMITTEE REPORTS

OPEN DISCUSSION BY CITIZENS

EXECUTIVE SESSION



**TOWN OF WESTFIELD
TOWN COUNCIL
REGULAR MEETING**

**Tuesday, February 8, 2022
8:00 PM**

PROPOSED AGENDA

This agenda is prepared for the information of the public. It is the order of the meeting; however, if changes in order, deletions or additions are made, they will be noted at the time.

1. Roll Call
2. Invocation
3. Salute to the flag
4. Appointments
5. Presentations
6. Advertised Hearings
 1. GENERAL ORDINANCE NO. 2022-01
AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF WESTFIELD, CHAPTER 20
 2. GENERAL ORDINANCE NO. 2022-02
AN ORDINANCE TO AMEND THE SECTION OF THE CODE OF THE TOWN OF WESTFIELD REGARDING ADDRESSING COUNCIL
 3. GENERAL ORDINANCE NO. 2022-03
AN ORDINANCE AMENDING ARTICLE 16, EXTERIOR SIGNS, OF THE LAND USE ORDINANCE OF THE TOWN OF WESTFIELD
7. Approval of Minutes from Town Council Conference Session held January 25, 2022
Approval of Minutes from Town Council Regular Meeting held January 25, 2022
8. Petitions and Communications
9. Open discussion by citizens
10. Bills and Claims in the amount of \$404,404.73

11. Reports of Standing Committees

Finance Policy Committee

12. Resolution authorizing the Chief Financial Officer to refund Recreation Department Fees
13. Resolution authorizing the Chief Financial Officer to draw warrants for overpaid taxes for 2020
14. Resolution authorizing the Chief Financial Officer to draw warrants for overpaid taxes for 2021 pursuant to Union County Tax Board
15. Resolution to amend an award of contract for technical upgrades to Council Chambers
16. Resolution to amend an award of contract for professional engineering services
17. Resolution to approve Westfield Memorial Pool Membership rates
18. Resolution to extend contract for Westfield Memorial Pool Concessionaire
19. Resolution authorizing the Chief Financial Officer to sign biweekly warrants for the non-union library employee salaries effective January 1, 2022
20. Resolution authorizing the submission of an application for \$20,000 in funding through PSE&G's Sustainable Jersey Grants Program
21. Resolution to approve 2022 sewer fees
22. Resolution authorizing the Chief Financial Officer to make a budget transfer

Public Safety, Transportation and Parking Committee

Code Review & Town Property Committee

1. GENERAL ORDINANCE NO. 2022-04
AN ORDINANCE AMENDING CHAPTER 17 OF THE TOWN CODE, RELATING TO POLES, WIRES, AND WIRELESS TELECOMMUNICATION FACILITIES LOCATED WITHIN THE MUNICIPAL PUBLIC WAY OF THE TOWN OF WESTFIELD
2. GENERAL ORDINANCE NO. 2022-05
AN ORDINANCE AMENDING CHAPTER 24 OF THE TOWN CODE, RELATING TO STREET OPENINGS AND EXCAVATIONS
3. GENERAL ORDINANCE NO. 2022-06
AN ORDINANCE AMENDING ARTICLE 5, ENTITLED, "FEES, DEPOSITS, GUARANTEES AND OTHER PAYMENTS" OF THE LAND USE ORDINANCE OF THE TOWN OF WESTFIELD

Public Works Committee

3. Resolution authorizing Change Order No. 1 for 2021 Leaf Collection Program (Various Vendors)
4. Resolution authorizing Change Order No. 1 for 2021 Improvement to Willow Grove Road

12. Reports of Department Heads

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2022-01

**AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF
WESTFIELD, CHAPTER 20**

BE IT ORDAINED by the Town Council of the Town of Westfield in the County of Union as follows:

SECTION 1. The provisions of Sections 20-23 and 20-25 are hereby amended to read as follows:

20-23. There shall be an annual sewer user fee for each property based on the uses of the property in accordance with the following schedule:

- (a) Single Family uses. The sewer user fee for a single-family residence shall not exceed \$245.00 per annum.
- (b) Commercial and Industrial uses. The sewer user fee for commercial and industrial properties shall not exceed \$975.00 per annum.
- (c) Multi-Family uses. The sewer user fee for each multi-family unit on a property shall not exceed \$175.00 per annum.

The term “multi-family unit” shall mean each unit in a building containing two (2) or more separate dwelling units. The term “single-family residence” shall mean a building consisting of only one (1) dwelling unit within said building.

20-25. By no later than the second regularly scheduled Town Council meeting in February of each year, the Town Council, by resolution, shall determine the sewer fee for the then current calendar year, subject to the maximum amounts set forth in Section 20-23. The bill for the sewer user fee shall be forwarded by the Town to the property owner, or other party designated in writing by the property owner, on or before end of the month of February of each year and shall be due no later than April 1 of each year. There shall be a ten (10) day grace period from the due date. Sewer user fees shall be a lien upon the property until paid, and the Town shall have the right to exercise the same remedies it has for the collection of taxes upon real estate with interest, cost and penalties as provided in N.J.S.A. 54:4-67.

SECTION II. All ordinances or parts of ordinances, including all provisions contained in Chapter 20, in conflict or inconsistent with any part of the terms of this ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

SECTION III. In the event any section, part or provision of this ordinance shall be held unconstitutional or invalid by any court, such holding shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so held unconstitutional or invalid.

SECTION IV. This ordinance shall take effect after passage and publication, as soon as, and in the manner permitted by law.

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY**

GENERAL ORDINANCE NO. 2022-02

**AN ORDINANCE TO AMEND THE SECTION OF THE CODE OF THE
TOWN OF WESTFIELD REGARDING ADDRESSING COUNCIL**

WHEREAS, the Mayor of the Town of Westfield (the “Town”) is charged with recognizing residents at Town Council meetings and allowing them to speak for up to ten (10) minutes; and

WHEREAS, the Mayor and Town Council recognize importance of the principles, as embodied in the Open Public Meetings Act, **N.J.S.A. 10:4-6** et seq., that government meetings should be conducted in the open, to the greatest extent possible, consistent with the public interest and without invading individual privacy; and that the public must be permitted to speak at such open public meetings on any issue that the speakers believe may be of concern to the residents of the municipality; and

WHEREAS, Open Public Meetings Act permits municipal governing bodies to determine the length of time that each individual may address the governing body during the public comment period; and

WHEREAS, the Mayor and Town Council recognize that there will be and have been times in which the 10-minute time period allotted to each speaker under the Westfield Town Code particularly in the case of heavily attended meetings, may delay meetings for an unreasonable length of time, and may effectively deny some speakers their right to address the Mayor and Council, because they may no longer be able to attend these open public meetings at later hours of the evening.

NOW, THEREFORE, BE IT RESOLVED, as follows:

SECTION I. Section 2-66, Chapter 2, “Addressing Council,” of the Town Code shall be and is hereby amended as follows”

Taxpayers or residents of the Town, or their legal representatives may address the Council during the period of open discussion by citizens on any matter over which the Council has jurisdiction. Any person desiring to address the Council shall first seek to be recognized by the presiding officer and such person, upon recognition, shall give his or her name and address. Unless additional time is granted by the presiding officer, each person shall limit his or her statement to 5 minutes. All remarks shall be addressed to the presiding officer.

SECTION II. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION III. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION IV. This Ordinance shall take effect after passage and publication in the manner provided by law.

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2022-03**

**AN ORDINANCE AMENDING ARTICLE 16, EXTERIOR SIGNS,
OF THE LAND USE ORDINANCE OF THE TOWN OF WESTFIELD**

WHEREAS, the Land Use Ordinance permits multi-family dwellings containing more than four units to have a sign if they are located in certain zone districts which existed at the time of the adoption of Article 16, Exterior Signs, contained therein; and

WHEREAS, since the adoption of Article 16, Exterior Signs, affordable housing overlay zone districts have been created which allow for multi-family dwellings containing more than four units, and the Town Planner recommends that Article 16, Exterior Signs, be updated to allow for multi-family housing containing more than four units constructed in those districts to also have signage; and

WHEREAS, the Town Planner recommends that existing placement and dimensional standards contained within the ordinance for multi-family dwellings containing more than four units remain the same at this time.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Westfield in the County of Union as follows:

SECTION I. The Town Council of the Town of Westfield does hereby find that multi-family dwellings within the Town must be provided adequate opportunity to enable them to be readily identified. The Town Council does hereby further find that the public interest of the Town of Westfield will be served by amending the Land Use Ordinance of the Town of Westfield in the manner set forth herein.

SECTION II. Article 16, Section 16.04 titled “PERMITTED SIGNS”, subsection “C” introductory paragraph is hereby amended to read as follows:

C. Signs for multi-family dwellings containing more than four (4) units. Regardless of the zone district, each lot containing a lawful, multi-family dwelling containing more than four (4) units shall be permitted the following sign(s):

SECTION III. All ordinances or parts of ordinances in conflict or inconsistent with any part of this ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION IV. In the event that any section, provision, or part of provision of this ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

SECTION V. This ordinance shall take effect after passage and publication in the manner provided by law.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

RESOLVED, that the Town Treasurer be authorized to refund the following fees to the following individual:

<u>Name</u>	<u>Account</u>	<u>Class</u>	<u>Fee</u>
Jordan Minno 618 Maple St Westfield, NJ 07090	Tennis/Rec T-05-600-071	Refund Young Rembrandts Elem Drawing Eleanor Minno / Winter 2022	\$140.00
Mark Ferrie 145 Harrison Ave Westfield, NJ 07090 Motion	Tennis/Rec T-05-600-071	Refund Built By Me / Winter 2022 Donncha Ferrie/Art of Filmmaking Stop-	\$200.00
Shelby Markowitz 128 Harrison Ave Westfield, NJ 07090	Tennis/Rec T-05-600-071	Refund Young Rembrandts Elem Drawing Henry Markowitz/Winter 2022/pro-rated	\$115.00

TOWN OF WESTFIELD
WESTFIELD NEW JERSEY

RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

RESOLVED that the Chief Financial Officer be, and he hereby is authorized to draw warrants to the following persons, these amounts being overpaid for 2020:

<u>Block/Lot/Qualifier</u>	<u>Property Address</u>	<u>Quarter/Year</u>
<u>Name</u>	<u>Amount</u>	
706/14	807 Embree Crescent	2 nd /2020
CASSEL, Thomas J		\$3,177.16

TOWN OF WESTFIELD
WESTFIELD NEW JERSEY

RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

RESOLVED that the Treasurer be and he hereby is authorized to draw warrants to the order of the following persons, this being the amount taxes were overpaid for the years 2021 pursuant to judgments from the Union County Tax Board:

Block/Lot	Name	Address	Year	Amount
3105/18	1 Elm Street Associates LLC	1 Elm Street	2021	\$31,074.90

Attn: John R. Lloyd, Esq.
One Boland Drive
West Orange, NJ 07052

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION NO. 2022

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, a need exists for technical upgrades to the Town Council Chambers and other meeting rooms within the Westfield Municipal Building, and

WHEREAS, at a meeting held October 13, 2020, the Town Council of the Town of Westfield authorized an award of contract to Fraytak Veisz Hopkins Duthie P.C. (FVHD), Architects and Planners, for various design and architectural services for the Town's AV Broadcast Video System in Town Council Chambers; and

WHEREAS, through the design and architectural services provided, FVHD has recommended that the Town of Westfield authorize a contract to CDW Government, 75 Remittance Drive, Suite 1515, Chicago, IL 60675-1515 for the technical upgrades needed for Town Council Chambers; and

WHEREAS, the contract for these technical upgrades was awarded through a Cooperative Purchasing Agreement, and

WHEREAS, there is a need to amend said contract to include alternate items including, document camera, interactive Technologies; and recording and distribution equipment.

WHEREAS, the Town Treasurer certified to the availability of adequate funds for payment of the above referenced alternate items, prepared in accordance with N.J.A.C. 5:30 1.10, which will be in the amount of \$36,631.68, under New Jersey State Approved Co-Op Contract No. ESCNJ 18/19-03, charged to Special Ordinance 2221, C-07-21-222-1F1, using Purchase Order No 21-03573, increasing the contract from \$173,577.77 to \$210,209.45.

NOW, THEREFORE BE IT RESOLVED that the Mayor and Town Council of the Town of Westfield be and hereby authorize an amendment to the contract awarded for services described above to CDW Government, 75 Remittance Drive, Suite 1515, Chicago, IL 60675-1515 for a fee not to exceed \$36,631.68, under New Jersey State Approved Co-Op Contract No. ESCNJ 18/19-03.

BE IT FURTHER RESOLVED that the proper Town Officials be, and they are hereby authorized to take whatever actions are appropriate in the execution and discharge of this Contract.

TOWN OF WESTFIELD
WESTFIELD NEW JERSEY

RESOLUTION NO. -2022

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, by resolution #143-2021 adopted by Town Council on June 15, 2021, David C. Battaglia, PE, CME, CFM, CPWM, of Van Cleef Engineering Associates, LLC, entered into a contract with the Town of Westfield for professional engineering services for Town Engineer and Planning and Zoning Engineer; and

WHEREAS, the estimated total fees included in the award was not expected to exceed, \$56,576; and

WHEREAS, due to an increase in the number of hours worked the total fees through December 31, 2021 are now estimated to be \$67,516, an increase of \$10,940.00; and

WHEREAS, the Chief Financial Officer has certified to the availability of adequate funds for payment, which will be an increase in the amount of \$10,940.00 charged to 135-121 under Purchase Order 21-01849 and has been prepared in accordance with N.J.A.C. 5:30 1.10.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Town of Westfield hereby amends its professional services contract with Van Cleef Engineering Associates, LLC, 32 Brower Lane, Hillsborough, NJ 08844 with professional engineering services for Town Engineer and Planning and Zoning Engineer provided by David C. Battaglia, PE, CME, CFM, CPWM.
2. The total fees for the year 2021 is not expected to exceed \$67,516 with this expenditure charged to the Engineering Account 135-121.
5. This professional services contract is amended pursuant to the “fair and open” process (N.J.S.A. 19:44A-20.5 et seq.).

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY

RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, the Recreation Commission of the Town of Westfield has determined the need to increase the Westfield Memorial Pool membership rates for the 2022 season;

NOW THEREFOR BE IT RESOLVED, the Westfield Memorial Pool membership rates for 2022 are established as follows:

RESIDENT:	2022 Rates
Family (5 or more)	\$545.00
Family (4 or less)	\$440.00
Couples, Parent/Child (under 18)	\$310.00
Individual	\$199.00
Senior	\$90.00
Family w/Child care (6 or more)	\$545.00
Family w/Child care (5 or less)	\$630.00

NON-RESIDENT:	2022 Rates
Family (5 or more)	\$824.00
Family (4 or less)	\$722.00
Couples, Parent/Child (under 18)	\$583.00
Individual	\$385.00
Senior	\$155.00
Family w/Child care (6 or more)	\$1,018.00
Family w/Child care (5 or less)	\$915.00

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, the Recreation Commission of the Town of Westfield determined that there was a need for food concession for the 2021 season at the Westfield Memorial Pool; and

WHEREAS, on February 25, 2021, the Town of Westfield issued a Request for Proposals (RFP) for food concession services at the Westfield Memorial Pool through a fair and open process in accordance with N.J.S.A. 19:44A-20.4 et seq., and

WHEREAS, at a meeting held March 23, 2021, the Mayor and Town Council of the Town of Westfield adopted Resolution No. 72-2021, authorizing an award of contract to Lizzard Inc. DBA Suspenders, 1131 Magie Avenue, Union, New Jersey 07208 for said food concession services; and

WHEREAS, the contract term within the RFP document provided for an extension of said contract for four (4) additional years at the sole discretion of the Town of Westfield; and

WHEREAS, the Recreation Commission is recommending that the Town Council authorize an extension of the contract for food concession services at the Westfield Memorial Pool with Lizzard Inc. for an additional 2 seasons, with a 3% increase for 2022.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Westfield be and hereby authorizes an award of contract to Lizzard Inc. DBA Suspenders, 1131 Magie Avenue, Union, New Jersey 07208 for food concession services for the 2022 season at the Westfield Memorial Pool with a payment to the Town of Westfield totaling \$14,627.55.

BE IT FURTHER RESOLVED that the proper Town Officials be authorized to effect whatever actions are necessary in the execution and discharge of this contract.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, the Board of Trustees of the Westfield Memorial Library, pursuant to authority granted to the Trustees by Statute, has adopted a payroll for employees and the salary amounts;

NOW, THEREFORE BE IT RESOLVED, that the payroll consisting of the following regularly salaried employees of the Westfield Memorial Library be adopted retroactive to be effective January 1, 2022, and that the Chief Financial Officer be authorized to draw warrants to their order, biweekly, as their names appear on the departmental payrolls, and that the Mayor and the Town Clerk be, and they are hereby, authorized to sign a warrant in compliance thereto for the amount of the payroll biweekly:

<u>Name</u>	<u>Title</u>	
Allen McGinley	Library Director	\$123,000
Jennifer Schultz	Librarian - Dept. Head	\$ 90,697
Adrienne Basso	Librarian – Dept. Head	\$ 83,666
Mary Adams	Librarian – Dept. Head	\$ 74,104
Jeannine Forbes	Library Associate	\$ 47,744
Cesar Rodreguez	Senior Custodian	\$ 46,680
Maryann Prokop	Office Manager	\$ 57,477
Warren Hoffman	Library Assistant I	\$ 39,398
Emily Pope	Library Assistant I	\$ 36,820
Mina Tawfik	System Administrator	\$ 71,575

TOWN OF WESTFIELD
WESTFIELD NEW JERSEY

RESOLUTION NO.

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, a sustainable community seeks to optimize quality of life for its residents by ensuring that its environmental, economic and social objectives are balanced and mutually supportive; and

WHEREAS, the Town of Westfield strives to save tax dollars, assure clean land, air and water, improve working and living environments; and

WHEREAS, the Town of Westfield is participating in the Sustainable Jersey Program; and

WHEREAS, one of the purposes of the Sustainable Jersey Program is to provide resources to municipalities to make progress on sustainability issues; and

WHEREAS, there is an opportunity for funding through the 2022 Sustainable Jersey Grants Program funded by PSE&G; and

WHEREAS, the Town of Westfield wishes to submit an application for \$20,000 in funding through this grant program for bicycle infrastructure design.

NOW THEREFORE BE IT RESOLVED that the Town Council of the Town of Westfield, State of New Jersey, authorizes the submission of a grant application for \$20,000 in funding for the aforementioned project through PSE&G's 2022 Sustainable Jersey Grants Program.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY

RESOLUTION NO. 2022

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

WHEREAS, the Town Council passed General Ordinance No. 2022-01 pursuant to which Sections 20-23 and 20-25 of the Town Code were amended and a schedule of maximum annual sewer user fees for properties in the Town was established; and

WHEREAS, the sewer user fee for a single-family residence was set to not exceed \$245.00 per annum; and

WHEREAS, the sewer user fee for commercial and industrial properties was set to not exceed \$975.00 per annum; and

WHEREAS, the sewer user fee for each multi-family unit on a property was established to not exceed \$175.00 per annum; and

WHEREAS, Section 20-25 of the Town Code provides that by February 24 of each year, the Town Council, by resolution, shall determine the exact sewer fee for the then calendar year, subject to the maximum amounts set forth in Section 20-23.

NOW, THEREFORE, be it resolved that the following sewer fees are hereby established for the calendar year 2022:

- a. The sewer user fee for a single-family residence shall be \$195.00.
- b. The sewer user fee for a commercial and industrial property shall be \$575.00.
- c. The sewer user fee for each multi-family unit on a property shall be \$120.00.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION

FINANCE POLICY COMMITTEE

FEBRUARY 8, 2022

RESOLVED that the Chief Financial Officer be authorized to make the following transfer(s) in the 2021 Budget (Appropriation Reserve) accounts, where (S&W) refers to the Salary & Wages line item while (O/E) refers to the Other Expenses line items:

	<u>OUT</u>	<u>IN</u>
<u>CURRENT FUND</u>		
Legal Services		
1-01-120-212 (O/E)		1,000
Fire Department		
1-01-125-102 (S&W)	3,500	
1-01-125-219 (O/E)	2,000	
Crossing Guards		
1-01-132-111 (O/E)	2,400	
Engineering		
1-01-135-121 (O/E)		6,300
Emergency Management		
1-01-136-201 (O/E)	300	
1-01-136-211 (O/E)	2,000	
Public Works		
1-01-137-102 (S&W)		69,000
1-01-137-246 (O/E)	69,000	
Street Lighting		
1-01-167-211 (O/E)		2,500
Heating Gas		
1-01-170-211 (O/E)	13,500	
Gasoline		
1-01-171-211 (O/E)		11,500
Municipal Court		
1-01-175-217 (O/E)	3,500	
Planning Board		
1-01-190-216 (O/E)		5,900
	_____	_____

\$96,200

\$96,200

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2022-04**

**AN ORDINANCE AMENDING CHAPTER 17 OF THE TOWN
CODE, RELATING TO POLES, WIRES, AND WIRELESS
TELECOMMUNICATIONS FACILITIES LOCATED WITHIN
THE MUNICIPAL PUBLIC WAY OF THE TOWN OF WESTFIELD**

WHEREAS, the Mayor and Town Council have strived to provide leadership and guidance on emerging topics important to the people of the Town of Westfield (the “Town”); and

WHEREAS, the Mayor and Town Council are aware that certain technological developments have made access to its Municipal Rights-of-Way desirable by certain telecommunications companies and operators for the placement of small cell infrastructure, also known as “Small Wireless Facilities,” including small cell wireless telecommunications facilities (“Small Cells”), “5G cell towers,” and distributed antenna systems (“DAS”); and

WHEREAS, the Declaratory Ruling and Third Report and Order in “In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” adopted September 26, 2018, by the Federal Communications Commission (“Order”), is intended to facilitate the spread, growth, and accumulation of wireless telecommunications facilities over a short period of time in order to enable deployment of technology that the Order claims will enable increased competition in healthcare, Internet of Things applications, life-saving car technologies and create jobs, possibly increasing the U.S. economy by as much as \$100 billion by speeding up the deployment of Small Wireless Facilities; and

WHEREAS, providers within the wireless telecommunications industry have expressed interest in submitting applications for the installation of Small Wireless Facilities in the Town’s public rights-of-way, and other New Jersey municipalities have also received applications for Small Wireless Facilities to be located within the public right-of-way; and

WHEREAS, the public right-of-way in the Town is a uniquely valuable public resource, closely linked with the Town’s historical, unique small-town character, as well as its attractiveness for visitors, members of the business community, and residents alike; and

WHEREAS, the reasonably regulated and orderly deployment of Small Wireless Facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents a threat to the health, welfare, and safety of the community; and

WHEREAS, Small Wireless Facilities are primarily installed within public rights-of-way and can create significant and far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection and preservation of public property, and the health, safety, and welfare of the general public; and the regulation of Small Wireless Facilities in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the Town, and to ensure that all Small Wireless Facilities are installed using the least intrusive means possible; and

WHEREAS, left unregulated, installation of Small Wireless Facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of small cell infrastructure; traffic and pedestrian safety hazards due to the unsafe location of Small Wireless Facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, height, noise or lack of camouflaging of Small Wireless Facilities, including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the Town; and

WHEREAS, the Mayor and Town Council recognize that the use of the public right-of-way must be managed carefully with the utmost consideration given to the general welfare and best interest of its citizens; and

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

WHEREAS, the Town’s current regulation of poles and wires does not focus specifically on Small Wireless Facilities within the public right-of-way and the encroachment permit process. The existing standards have not been updated to reflect the development of current wireless telecommunications technologies, which are now the preferred method of providing wireless telecommunications services, or necessary legal requirements for such preferred methods and wireless telecommunications facilities covered under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, among other federal and state law requirements now applicable to local agencies; 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 Small Wireless Facilities can be placed on existing poles or new poles erected within public rights-of-way; and

WHEREAS, in addition to the Town’s need to update its regulations to reflect the development of current wireless technologies, the Town has a need to better manage access to

and use of its rights-of-way by traditional utilities providing, for example, electric, wired telephone, fiber optic, or wired cable TV service; and

WHEREAS, the Mayor and Town Council are committed to ensuring the safety of its citizens and preserving the aesthetic quality of its town and shall be in compliance with the Federal Communications Commission regulations which direct that municipalities may impose restrictions on Small Wireless Facilities which are: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployment; and (3) published in advance; and

WHEREAS, the Mayor and Town Council may impose such regulations on related Small Wireless Facility infrastructure including but not limited to small cells, all poles, antennas, and cabinets located on municipal rights-of-way; and

WHEREAS, the Town recognizes its responsibilities under the FTA of 1996 and state law and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting the provision of telecommunications service; rather, this Ordinance includes appropriate regulations to ensure that the installation, augmentation, and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the FTA and New Jersey law while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein; and

WHEREAS, the Mayor and Town Council have determined that the most efficient way to safely effectuate this process is to require all technology companies and operators seeking to use municipal rights-of way for the purpose of erecting and operating Small Wireless Facilities to apply for and be granted permits for such use, and to require that traditional utility companies, such as electric utility companies, be required to obtain permits in certain circumstances; and

WHEREAS, the Mayor and Town Council have determined that it is necessary to set forth clear, uniform, and comprehensive standards, regulations, and permit requirements for the installation of Small Wireless Facilities for the benefit of its citizens, and any utilities or telecommunications services which use or will seek to make use of the rights-of-way; and

WHEREAS adoption of this Ordinance is consistent with the Town's Master Plan, which provides goals, policies, and implementation measures to preserve the high-quality design, scale, unique, historical small-town character, aesthetics, scenic vistas, natural setting and resources, and environmental characteristics while also maintaining a strong and vibrant healthy economy for its local business and assuring the health and safety of the predominantly residential character of the community, and adoption of this Ordinance will provide uniform and comprehensive regulations and standards for Small Wireless Facilities in furtherance of these goals and objectives while reducing the potentially negative impacts.

NOW, THEREFORE, BE IT RESOLVED:

SECTION I. The existing provisions of Chapter 17, “Poles and Wires,” of the Town Code of the Town of Westfield shall be and hereby are deleted in their entirety, and replaced with such new sections as follows:

Chapter 17. Small Wireless Facilities, Poles and Wires.

ARTICLE I

Purpose

Sec. 17-1. Purpose

- a. The primary purpose and intent of this Chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation, and maintenance of Small Wireless Facilities within the public rights-of-way in the Town of Westfield. A secondary purpose of this Chapter is to better manage access to and use of its rights-of-way by traditional utilities providing, for example, electric, wired telephone, fiber optic, or wired cable TV service.
- b. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with Small Wireless Facilities. This Chapter provides standards necessary to: (1) preserve and promote harmonious land uses and the public right-of-way in the Town; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the Town consistent with the goals, objectives, and policies of the Master Plan; (3) provide for the orderly, managed, and efficient development of Small Wireless Facilities in accordance with state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of Small Wireless Facilities.
- c. This Chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct, or modify Small Wireless Facilities on the basis of environmental effects of radio frequency emissions to the extent that such Small Wireless Facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or state law; or (6) otherwise authorize the Town to preempt any applicable federal or state law.
- d. This Chapter is not intended to regulate traditional cell towers, also known as “Macro Towers, “Macro Cells,” “Macro Wireless Facilities” or “Macro Sites.”

ARTICLE II

Definitions

Sec. 17-2. Definitions. The following terms when used in this Chapter shall have the meaning indicated:

- a. **5G** — Means cellular technology that delivers faster speeds, low latency broadband services (smaller delay times), and which requires more infrastructure than its predecessors. 5G wireless technology is meant to deliver higher multi-Gbps peak data speeds, ultra-low latency, more reliability, massive network capacity, increased availability, and a more uniform user experience to more users.
- b. **ACCESSORY EQUIPMENT** — Means any equipment associated with the installation of a Small Wireless Facility, including but not limited to cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.
- c. **ADMINISTRATIVE REVIEW TEAM** — Means the Town Planner, Towner Engineer, and Zoning Officer.
- d. **ANTICIPATED MUNICIPAL EXPENSES** — Means the cost of processing an application for a right-of-way permit, including, but not limited to, all professional fees such as engineer and attorney costs to the Town.
- e. **CABINET** — Means a small, box-like, or rectangular container used to house telecommunications equipment (networking devices, small servers, power suppliers or transformers, switches, and controls, etc.) within the municipal right-of-way.
- f. **COLOCATION** — Means the use of a common wireless telecommunications tower or a common structure by two or more wireless license holders or unlicensed holders nevertheless regulated by the Federal Communications Commission or by one wireless license holder for more than one type of communications technology and/or placement of a wireless telecommunications tower on a structure owned or operated by a utility or other public entity.
- g. **ELECTRIC DISTRIBUTION SYSTEM** — Means the part of the electric system, after the transmission system, that is dedicated to delivering electric energy to an end user.
- h. **EXISTING POLE** — Means a pole that is in lawful existence within the municipal right-of-way.
- i. **FCC** - Means the Federal Communications Commission or its duly appointed successor agency.
- j. **GROUND-LEVEL CABINET** — Means a Cabinet that is not attached to an Existing

Pole and is touching the ground.

- k. **MACRO TOWER** (also known as “Macro Cells,” “Macro Wireless Facilities,” or “Macro Sites”) means a guyed or self-supported pole or monopole of a height greater than fifty (50) feet that supports or is capable of supporting antennas or associated telecommunications equipment.
- l. **MUNICIPAL RIGHT-OF-WAY** — Means the surface of, and the space above or below, any public street, road, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Town as an easement or in fee simple ownership. This term also includes any other area that is determined by the Town to be a right-of-way in which the Town may allow the installation of Poles, Cabinets, and Antennas, as well as rights-of-way held by the County of Union where the Town’s approval is required for the use of same pursuant to N.J.S.A. 27:16-6.
- m. **POLE or WIRELESS POLE** — Means a long, slender, rounded support structure constructed of wood or metal located in the municipal right-of-way upon which electrical and/or telecommunications equipment may be mounted for the purpose of providing utility services or personal wireless services as defined by federal law. “Pole” does not include a Town-owned pole with one or more streetlights and related equipment mounted on it that is solely operated by the Town. A **POLE or WIRELESS POLE** shall be deemed to include any wires or cable connected thereto and any replacements therefor which are similar in construction and use.
- n. **POLE-MOUNTED ANTENNA** — Means a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, directional antennas, microwave dishes, satellite dishes, omnidirectional antennas, wireless access points, small cell equipment and transmission media such as femtocells, picocells, microcells, and outside distributed antenna systems. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.
- o. **POLE-MOUNTED CABINET** — Means any type of cabinet, container, or enclosure that is proposed to be placed on an Existing Pole or Proposed Pole.
- p. **PROPOSED POLE** — Means a Pole that is proposed to be placed in the Municipal Right-of-Way. Proposed poles may be either new poles, that is, such poles did not previously exist in that location; or replacement poles, that is, poles that are replacing existing poles in that same location.
- q. **RIGHT-OF-WAY AGREEMENT** — Means an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.
- r. **RIGHT-OF-WAY PERMIT** — Means an approval granted pursuant to this Chapter setting forth applicant’s compliance with the requirements of this Chapter.
- s. **SITE** – Means any single location at which a Small Wireless Facility, or any portion of a

Small Wireless Facility (including but not limited to pole-mounted antenna, pole-mounted cabinet, cabinet, or ground-level cabinet) is to be erected.

- t. **SMALL CELL EQUIPMENT** — Means wireless facilities and transmission media, including femtocells, picocells, and/or Outside Distributed Antenna Systems (ODAS) attached, mounted, or installed on an Existing Pole or Wireless Pole in the public Rights-of-Way and used to provide personal communications services.
- u. **SMALL WIRELESS FACILITY**— Means any structure or device used for the purpose of providing, supporting, enabling, or otherwise facilitating telecommunications, including but not limited to small cell equipment and wireless poles, as defined herein. Small cells are low-powered, cellular radio access nodes that operate in licensed and unlicensed spectrum and have a range of 10 meters to 200 meters.
- v. **SURROUNDING STREETSCAPE** — Means Existing Poles within the same right-of-way which are located within 500 feet of a Proposed Pole.
- w. **TOWN COUNCIL** — Means the Governing Body of the Town of Westfield.
- x. **TOWN NON-RESIDENTIAL ZONES** — Means the P-1, P-2, O-1, O-2, O-3, CBD, GB-1, GB-2, GB-3, and C zones as designated in Sec. 11.01 of the of the Town of Westfield Land Use Law.
- y. **TOWN RESIDENTIAL ZONES** — Means the RS-40, RS-24, 4S-16, RS-12, RS-10, RS-8, RS-6, RM-12, RM-8, RM-6, RM-6D, RA-1, RA-2, RA-3, RA-4M RA-5A, RA-5B, RA-5C, NA-AH, NS-AMFH, and WBS-AMFH zones as designated in Sec. 11.01 of the of the Town of Westfield Land Use Law.
- z. **UTILITIES REGULATED BY THE BOARD OF PUBLIC UTILITIES** — Means companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes.
- aa. **UTILITY POLE** – Means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the New Jersey Board of Public Utilities.
- bb. **UTILITY SERVICE** — Means electric, wired telephone, fiber optic service, or wired cable TV service. Telecommunications services are typically carried over media such as twisted pair, copper wire, coaxial cable, of fiber strands. Power Distribution is typically carried over copper wiring ranging in gauge from 16 to 10 or larger.

ARTICLE III

Right-of-Way Permits

Sec. 17-3.1. Pole-Mounted Antennas; Access to Right-of-Way; Right-of-Way Agreements.

- a. No person shall operate or place any type of pole, wireless pole, utility pole, Pole-

Mounted Antenna, or any Small Wireless Facility within the municipal right-of-way without first obtaining a right-of-way permit as required by this Chapter and entering into a Right-of-Way Agreement with the Town pursuant to the provisions of this Chapter.

- b. Notwithstanding section (a) above, no Right-of-Way Permit or Right-of-Way Agreement shall be required when a utility service is replacing an existing pole with a replacement pole that is substantially identical to, or smaller than, the pole being replaced as to its height and diameter, and the material of the replacement pole is substantially identical to the material of the existing pole.
- c. The terms of said Right-of-Way Agreement shall include:
 - (1) A term not to exceed fifteen (15) years;
 - (2) Reasonable insurance requirements;
 - (3) Designation of an individual as a point of contact available during business hours;
 - (4) Imposed fines for unauthorized installations;
 - (5) Requirements regarding the repair, maintenance, removal, and relocation of the equipment;
 - (6) A reference to the siting standards set forth in this Chapter; and
 - (7) Any other items which may be reasonably required, including such applicable requirements set forth in Sec. 17-3.4.

Sec. 17-3.2. Application to Utilities Regulated by the Board of Public Utilities, Other Entities.

Notwithstanding any franchise or Right-of-Way Agreement to the contrary, all Small Wireless Facilities proposed to be placed within the municipal right-of-way by a utility regulated by the Board of Public Utilities, and all other entities lawfully within the municipal right-of-way shall be subject to the standards and procedures set forth in this Chapter and shall require right-of-way permits for the siting of any Poles, Antennas, Small Wireless Facilities, and Cabinets in the municipal right-of-way.

Sec. 17-3.3. Right-of-Way Permits, Siting Standards for Poles, Antennas, and Cabinets in the Right-of-Way.

- a. Except as provided in section 17-3.1(b) above, no Pole, Antenna, or Cabinet shall be installed within the municipal right-of-way without the issuance of a Right-of-Way Permit.
- b. Pole Siting Standards.
 - (1) Height. No Proposed Pole shall be taller than thirty-five (35) feet or one hundred ten

- (110%) percent of the height of Poles in the Surrounding Streetscape, whichever is higher.
- (2) Distance from Curb Line. No Proposed Pole shall be farther than eighteen (18) inches from the curb line.
- (3) Location, Safety, and Aesthetics.
- (a) No Proposed Pole shall be erected in the Right-of-Way unless it:
- (i) Is replacing an existing pole, provided that the replacement pole is substantially identical to the pole being replaced as to its height, diameter, and material.
- (ii) Is replacing an existing pole with a new pole that is being installed, at least in part, for a Small Wireless Facility purpose, provided that such replacement pole has been approved pursuant to the application process as required and defined by this Chapter, and provided further that any such replacement pole is designed to be the *minimum* functional height and width required to support a proposed antenna installation and meet FCC requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of a Small Wireless Facility.
- (b) For sites in the Residential Zones, a new Proposed Pole shall be located a minimum of 200 linear feet from any other Existing Pole or Proposed Pole along the same side of the street, or for sites in the Non-Residential Zones is a minimum of 100 linear feet from any other Existing Pole or Proposed Pole along the same side of the street.
- (c) If a new Proposed Pole is sought to be erected for the purpose of provided utility service, no such Proposed Pole shall be erected in any area with underground utilities.
- (d) No new or replacement Proposed Pole shall inhibit any existing sight triangles or sight distances.
- (e) No new or replacement Proposed Pole shall be erected unless it allows adequate room for the public to pass and re-pass across, along and through the Right-of-Way.
- (f) Any new or replacement Proposed Pole must be 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
- (g) If a new Proposed Pole is to be sited in any historic district or on any historic

landmark of the Town, each such Proposed Pole must be reviewed and approved by the Historic Preservation Committee.

- (h) If an applicant proposes to replace an existing pole in order to accommodate a small wireless facility, the replacement pole shall match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this Chapter. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven feet.
 - (i) If an exception pursuant to section 17-3.5(f) below is granted for placement of a new pole or poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way, including size, height, color, materials, and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced, unless another design better accomplishes the objectives of this section.
 - (j) Any necessary equipment is permitted on a pole where said pole otherwise conforms with the standards set forth in Sec. 17-3.3.
- c. Ground-Level Cabinet Siting Standards.
- (1) Ground-Level Cabinets are prohibited in the Municipal Right-of-Way in all Residential Zones and any future residential zones.
 - (2) Ground-Level Cabinets are permitted in all Non-Residential Zones provided that such Ground-Level Cabinet:
 - (a) Is less than 28 cubic feet in volume;
 - (b) 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
 - (c) Does not inhibit any existing sight triangles or sight distance; and
 - (d) Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
- d. Pole-Mounted Antenna and Pole-Mounted Cabinet Siting Standards.
- (1) Pole-Mounted Antennas are permitted on new and existing Poles, provided that each Pole-Mounted Antenna:
 - (a) Does not exceed 3 cubic feet in volume. 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.

- (c) Does not inhibit any sight triangles or sight distance.
 - (d) Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
 - (e) Does not interfere with the frequencies used by a public safety agency for public safety communications equipment, a public safety spectrum, or any other spectrum licensed by a public safety agency, or violate any harm claim thresholds established by the FCC or any other governmental agency.
 - (f) Does not extend 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface.
 - (g) Notwithstanding the above, no small wireless facility shall be located on a pole that is less than 26 feet in height, and no facility shall exceed 35 feet in height, including, but not limited to the pole and any antenna that protrudes above the pole.
 - (h) Pole mounted equipment, other than pole-mounted cabinets, shall not exceed six cubic feet in dimension.
- (2) 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 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
 - (c) Does not inhibit any sight triangles or sight distance; and
 - (d) Allows adequate room for the public to pass and repass across the Municipal Right-of-Way.
- e. Space occupied. Facilities shall be designed to occupy the least amount of space in the right- of-way that is technically feasible.
- f. Location.
- (1) Each component part of a small wireless facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists.
 - (2) A small wireless facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves,

- underground vaults, valve housing structures, or any other vital public health and safety facility.
- (3) Each pole mounted small wireless facility must be separated by at least 1,500 feet.
 - (4) All small wireless facility cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if not infeasible as described within subsection h below.
 - (5) All new wires needed to service a small wireless facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.
 - (6) To the extent that such collocation would not impose technical limitations, degrade the structural integrity of a pole, or harm the Surrounding Streetscape, wireless facilities should be collocated on existing poles and on such existing poles on which carriers' wireless facilities are already located.
- g. Americans with Disabilities Act Compliance. All telecommunications facilities shall be built in compliance with the Americans with Disabilities Act (ADA).
 - h. Accessory equipment. To preserve community aesthetics, all accessory equipment (with the exception of the smallest possible electrical meter boxes and any other equipment that may not be so placed) shall be placed within an underground vault whenever there are no physical or site constraints to make an underground vault infeasible, except as may be determined by the Administrative Review Team. Equipment which may not be placed in an underground vault shall be pole-mounted to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged. Infeasibility under this paragraph shall not be demonstrated by mere cost to construct an underground vault or place the equipment within the vault.
 - i. Where feasible, as new technology becomes available, the permittee shall:
 - (1) place above-ground telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and

- (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Westfield Town Code.
- j. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the Town reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting, and public signage.
 - k. At all times, all required notices and signs shall be posted on the site as required by local, state and federal agencies and authorities, and as approved by the Town. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
 - l. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.
 - m. The small wireless facility shall be subject to such conditions, changes, or limitations as are from time to time deemed necessary by the Town Engineer for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it. The Town may modify the permit to reflect such conditions, changes, or limitations by following the same notice and public hearing procedures as are applicable to the grant of a small wireless facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the Town by the permittee.
 - n. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the Town shall be moved to accommodate a small wireless facility unless the Town determines that such movement will not adversely affect the Town or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the Town's structure, improvement, or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the Town with documentation establishing to the Administrative Review Team's satisfaction that the permittee has the legal right to use or interfere with any other pole, structure, improvement, or property within the public right-of-way to be affected by applicant's facilities.

- o. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
- p. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to Town streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a small wireless facility in the public right-of-way. The permittee shall restore such areas, structures, and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In addition to the obligations set forth herein the permittee must comply with all applicable provisions of Chapter 24, Article II, related to Street Openings and Excavations. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Town Engineer, the Town Engineer shall cause such repair to be completed at permittee's sole cost and expense.
- q. Prior to issuance of a building permit, the applicant shall obtain the Town Engineer's approval of a tree protection plan that has been prepared by a certified arborist if the installation of the small wireless facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten feet may be required by the Town Engineer.
- r. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.
- s. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to Town, if and when made necessary by:
 - (1) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by Town or any other public agency;
 - (2) Any abandonment of any street, sidewalk, or other public facility;
 - (3) Any change of grade, alignment or width of any street, sidewalk, or other public facility; or
 - (4) A determination by the Town Engineer that the small wireless facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.

- t. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by the Town unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review, and approval of a permit amendment pursuant to the applicable construction codes and the Westfield Town Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the applicable construction codes and the Westfield Town Code allow. In the event the facility is not modified, removed, or relocated within said period of time, the Town may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Westfield Town Code, the Town may modify, remove, or relocate telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

Sec. 17-3.4. Permit Application Content and Process.

- a. The requirements of this section shall not apply in any circumstance in which a utility service provider that already has, as of the date of the adoption of this Ordinance, an existing utility pole, provided that the pole replacing the existing utility pole is identical, substantially identical, or smaller than the pole being replaced as to its height and diameter, and the material of the replacement pole is identical or substantially identical to the material of the existing pole.
- b. In all other circumstances, specifically, when: (1) a utility service provider seeks to erect a utility pole in the municipal right-of-way that is taller, larger, and/or of a different material than the existing utility pole; (2) when a utility provider seeks to erect a new utility pole in the municipal right-of-way; (3) when any applicant seeks to erect a new or replacement pole in the municipal right of way on which any small wireless facility is proposed to be placed; (4) when any applicant seeks to erect any ground level cabinet in the municipal right-of way; or (5) when any applicant seeks to erect any pole-mounted antenna or any other small wireless facility on an existing pole in the municipal right-of-way, a permit as set forth herein shall be required.
- c. Pre-Application Meeting. Prior to making a formal application with the Town for use of the Municipal Right-of-Way, all applicants are advised to schedule a meeting with the Town Engineer to review the scope of the applicant's proposal.
- d. Content of Permit Applications. All applications for a permit required by this Chapter and all required submittals must be made in writing by the applicant or the applicant's authorized agent on such form as the Town Engineer may prescribe, which form shall include the following information, in addition to all other information determined necessary by the Town Engineer:
 - (1) Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization of facility and/or property owner.

- (2) The type of use being proposed, including a full written description of the proposed facility, its purpose, and specifications.
- (3) A detailed site and engineering plan of the proposed site containing the exact proposed location of the site, created by a qualified licensed engineer and in accordance with requirements set by the Town Engineer.
- (4) A signed and sealed survey prepared by a New Jersey Licensed Professional Land Surveyor demonstrating that any Proposed Pole and/or Proposed Ground-Level Cabinet is located within the Municipal Right-of-Way.
- (5) Photographs of the site equipment and an accurate visual impact analysis with photo simulations, including reasonable line-of-sight locations from public streets or other adjacent viewpoints, and a map that shows the photo location of each view angle.
- (6) Proposed landscaping and/or nonvegetative screening (including required safety fencing) plan for all aspects of the site.
- (7) Written documentation demonstrating a good faith effort to locate the proposed pole and/or small wireless facility in the least intrusive location and screened to the greatest extent feasible in accordance with the site selection and visual impact criteria of this Chapter.
- (8) If the application is for a small wireless facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way and provide a copy of its certificate of public convenience and necessity ("CPCN"), if a CPCN has been issued by the New Jersey Board of Public Utilities.
- (9) A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years, in addition to the master plan described by this section.
- (10) A written report that analyzes acoustic levels for the proposed utility service, small wireless facility, and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with all local, County and state noise laws. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the noise contours for the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (11) If the applicant claims it requires an exception to the requirements of this Chapter,

all information, and studies necessary for the Town to evaluate that claim.

- (12) An application fee and deposits towards anticipated municipal expenses, as set forth in this Chapter, which deposit shall cover any expenses incurred by the Town, including staff time, a consultant review as set forth in Sec. 17-3.5(d) of this section, other legal and third-party services, and all other costs of whatever type or variety, incurred for the processing, review, commenting upon, evaluation, hearing, and consideration of the application. The applicant shall submit a fully executed cost recovery agreement in the form provided by the Town wherein the applicant agrees to replenish the deposited amount in full and fully reimburse the Town otherwise where the advance deposit is insufficient to cover all of the Town's costs related to the application. Where the advance deposit is insufficient to pay for the costs incurred by the Town, the Town Engineer shall invoice the applicant who shall pay the invoice in full within ten (10) calendar days after receipt of the invoice. No permit shall be issued to an applicant where that applicant has not timely paid a required fee, provided any required deposit, or paid any invoice as required by the Town Code. A "reasonable deposit" under this paragraph shall take into consideration the scope and scale of the proposal being made by the application, the Town's prior costs incurred with like or similar applications, and whether one or more exceptions are being requested by the applicant. Any portion of the deposit that is not expended by the Town shall be reimbursed to the applicant upon the completion of the application and determination process.
- (13) An agreement in the form provided by the Town that applicant agrees to defend, hold harmless and fully indemnify the Town, its officers, employees, agents, attorneys, and volunteers, from any claim, action or proceeding brought against the Town or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Town. This indemnification agreement shall be in a form acceptable to the Town Attorney and shall include, but not be limited to, damages, fees and/or costs awarded against the Town, if any, and cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the applicant, the Town, and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the applicant to indemnify the Town for all of the Town's costs, fees, and damages which the Town incurs in enforcing the indemnification provisions of this Section. Nothing in this section shall prohibit the Town from participating in the defense of any proceeding. In the event that the applicant is required to defend the Town in connection with any proceeding described in this section, the Town shall retain the right to approve: (a) the counsel to so defend the Town; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld.
- (14) In connection with an application for a small wireless facility, a master plan which identifies the location of the proposed facility in relation to all existing and potential locations in the Town that are reasonably anticipated for construction within two years of submittal of the application. Applicants may not file, and the Town shall not accept, applications that are not consistent with the applicant's master plan for a

period of two years from approval of a small wireless facility use permit unless: (a) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a small wireless facility site not shown on an applicant master plan submitted to the Town within the prior two years; (b) the applicant establishes that the application is needed to prevent the actual or effective prohibition of the provision of telecommunications wireless services under the Telecommunications Act of 1996; or (c) the applicant includes all of the documentation necessary to request an exception under this Chapter.

- (15) A siting analysis which identifies a minimum of five other feasible locations within or outside the Town which could serve the area intended to be served by the utility service or small wireless facility, unless the applicant provides compelling technical reasons for fewer than the minimum. The alternative site analysis should include at least one collocation site (in the case of a small wireless facility), if feasible.
- (16) Any request for exceptions to be made to the provisions of this Code shall be submitted at the time of the application. The request shall include an analysis as to the availability and feasibility of other alternatives to the exception(s) that are being requested and a description of the need for the exception and analysis of how the need would be met by the exception being requested.
- (17) A radio frequency (“RF”) exposure compliance report prepared and certified by an RF engineer licensed by the State of New Jersey that certifies that the proposed site, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power (“ERP”)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the site.
- (18) Every applicant applying for authorization to construct, modify, or remove a wireless communications facility located on private or public property must include with its application a written authorization signed by the property owner.
- (19) Any other studies or information as determined to be necessary by the Town Engineer in order to consider an application for utility service or a small wireless facility may be required.

Section 17-3.5. Administrative Review Team Meeting

- a. For all uses for which a permit is required under this Chapter, the application for such permit shall be reviewed by the Administrative Review Team in a meeting held for that purpose. Such meeting may be dispensed with by the Administrative Review Team in its discretion.
- b. Prior to any meeting of the Administrative Review Team (or if no meeting be held, prior

to any decision by the Administrative Review Team), the applicant for which such review is being sought shall take all of the following actions:

- (1) Send written notice to both the owner(s) of real property, as shown on the latest tax roll, within two hundred (200) feet of the proposed utility pole or small wireless facility, of the pendency of the filing of such an application, including with such notice copies of preliminary drawings of the proposed project at a scale no smaller than one inch equals sixteen feet. No application for review will be accepted as complete unless it contains evidence acceptable to the Town Engineer that such notice has been sent or such determination would otherwise be in conflict with federal or state law.
 - (2) All telecommunications facilities applications made under this section shall be expedited so as to comply with the shot clocks 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, and any other applicable FCC rules and regulations.
- c. Findings. The Administrative Review Team shall not approve any application unless all of the following findings are made:
- (1) The proposed facility complies with all applicable provisions of this Chapter.
 - (2) The proposed facility has been designed and located to achieve compatibility with the Surrounding Streetscape to the maximum extent reasonably feasible.
 - (3) For telecommunications facilities, the applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed small wireless facility wherever technically and economically feasible and where collocation would not harm Surrounding Streetscape compatibility.
 - (4) Noise generated by any equipment will not be excessive, annoying, nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this Chapter.
 - (5) The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the Town permitting them to use the public right-of-way.
 - (6) The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the Town's plans for modification or use of such location and infrastructure.
- d. The applicant must pay for the cost of any review required under this section and for any technical consultant's testimony in any meeting or hearing as requested by the Town Engineer and must provide a reasonable advance deposit of the estimated cost of such review with the Town prior to the commencement of any work. The cost of this review

shall be paid by the applicant through a deposit and cost recovery agreement pursuant to the application requirements stated within Section 17-3.6 below.

- e. If the Administrative Review Team rejects a Right-of-Way Permit, it shall set forth the factual basis for such a rejection in writing.
- f. Exceptions. Exceptions pertaining to any provision of this Chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the Administrative Review Team if the Administrative Review Team makes the finding that:
 - (1) Denial of the facility as proposed would violate federal law, state law, or both; or
 - (2) A provision of this Chapter, as applied to an applicant, would deprive the applicant of its rights under federal law, state law, or both.
- g. Independent expert.
 - (1) The Town Planner is authorized to retain on behalf of the Town any one or more independent, qualified consultants to review any application for a permit for a utility service pole or poles, or a small wireless facility, to review the technical aspects of the application, including but not limited to the following matters:
 - (a) The accuracy, adequacy, and completeness of submissions.
 - (b) Compliance with applicable radio frequency emission standards.
 - (c) Whether any requested exception is necessary to avoid actual or effective prohibition of provision of wireless telecommunications services or use of the public right-of-way on a non-discriminatory basis, which may include a determination as to whether the requested exception would close a significant gap in coverage and is the least intrusive means of doing so.
 - (d) Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis.
 - (e) The applicability, reliability, and sufficiency of analyses or methodologies used by the applicant and the validity of conclusions reached or claims made by applicant.
 - (f) Any other application issue or element that requires expert or specialized knowledge.
- h. An appeal from a final decision made by the Administrative Review Team shall be made to the Town Council. If the Town Council denies any application for a Right-of-Way Permit under this section, it shall do so in writing and set forth the factual basis for the denial.

- i. Waiver. The Administrative Review Team and/or the Town Council may waive any siting standard set forth in Section 17-3.3 where the applicant demonstrates that the strict enforcement of said standard:
 - (1) Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. § 253(a); or
 - (2) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(II); or
 - (3) 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
 - (4) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide Utility Service to any prospective customer within the Town.

- j. An applicant may request an exception only at the time of applying for a required permit and not at any time thereafter. The request must include both the specific provision(s) of this Chapter from which the exception is sought and the basis of the request. Any request for an exception after the Town has deemed an application complete shall be treated as a new application.

Sec. 17-3.6. Right-of-Way Permit Fees; Deposits Towards Anticipated Municipal Expenses.

- a. Every Right-of-Way permit application shall include a one-time right-of-way permit fee in the following amounts:
 - (1) One (1) to five (5) sites - \$500.00.
 - (2) Each additional site - \$100.00.
 - (3) Each new pole (not a collocation) intended to support a small cell facility or small wireless facility - \$1,000.
 - (4) Recurring annual fee, per pole/per year, and per ground-level cabinet/per year - \$270.00.

- b. Deposit Towards Anticipated Municipal Expenses.
 - (1) In addition to the right-of-way permit fee, the Town Engineer may, in his or her sole discretion, require the posting of a \$2,000.00 deposit towards anticipated municipal expenses related to an application made pursuant to this Chapter.
 - (2) Commencing on the fifth anniversary of the granting of a right-of-way permit, the right-of-way use fee shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of labor, Bureau of Labor Statistics consumer price

index which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA metropolitan statistical area.

- (3) Any applicant's deposit towards anticipated municipal expenses shall be placed in an escrow account. If said deposit contains insufficient funds to enable the Town to perform its review, the Chief Financial Officer of the Town shall provide applicant with a notice of insufficient balance. In order for review to continue, the applicant shall, within ten (10) days of said notice, post a deposit to the account in an amount to be mutually agreed upon.
- (4) The Town's Chief Financial Officer shall, upon request by the applicant, after a final decision has been made by the Administrative Review Team or the Town Council, as the case may be, regarding the pending right-of-way permit application, refund any unused balance from the applicant's deposit towards anticipated municipal expenses.

Sec. 17-3.7. Operation and Maintenance Standards

- a. All utility service operators and operators of small wireless facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:
 - (1) After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
 - (2) After permittee, owner, operator, or any designated maintenance agent receives notification from a resident or the planning director.
- b. All facilities, including, but not limited to, utility poles, telecommunications facilities, accessory equipment, lighting, fences, walls, shields, ground-level or pole-mounted cabinets, artificial foliage or camouflage, and the facility site, shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - (1) General dirt and grease;
 - (2) Chipped, faded, peeling, and cracked paint;
 - (3) Rust and corrosion;
 - (4) Cracks, dents, and discoloration;
 - (5) Missing, discolored, or damaged artificial foliage or other camouflage;
 - (6) Graffiti, bills, stickers, advertisements, litter and debris;
 - (7) Broken and misshapen structural parts; and
 - (8) Any damage from any cause.

- c. All trees, foliage, or other landscaping elements approved as part of a facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Town Engineer.
- d. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- e. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.
- f. Each facility shall be operated and maintained to comply at all times with local, county, and state noise regulations and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the municipal right-of-way shall only occur between the hours of 8:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the Town Engineer. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
- g.. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

Sec. 17-3.8. Miscellaneous Provisions.

- a. In addition to receiving a right-of-way permit, an applicant must also obtain all necessary road opening permits, construction permits, and any other requirement set forth in the Town Code for the Town of Westfield or New Jersey statute.
- b. The Town's consent for use of county roads, as required pursuant to N.J.S.A. 27:16-6, shall take the form of a right-of-way permit subject to the standards and application process set forth in this Chapter.
- c. Effect on Other Ordinances. Compliance with the provisions of this Chapter shall not relieve a person from complying with any other applicable provision of the Westfield Town Code, including but not limited to obtaining any necessary encroachment or building permits. In the event of a conflict between any provision of this Chapter and other provisions of the Westfield Town Code, this Chapter shall control.
- d. Effect of state or federal Laws. In the event that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, the permits required by this Chapter for those facilities shall be deemed to be ministerial permits. For those facilities, a ministerial permit shall be required prior to installation or modification of a small wireless facility and all provisions of this Chapter shall be applicable to any such facility with the exception that the required permit shall be

reviewed and administered as a ministerial permit by the Town Engineer rather than as a discretionary permit. Any conditions of approval set forth in this Chapter or deemed necessary by the Town Engineer shall be imposed and administered as reasonable time, place, and manner rules.

ARTICLE IV

Removal of Poles and Facilities; Restoration; Expiration of Permits; Fines and Penalties

Sec. 17-4.1. Notice of Removal or Replacement Required.

- a. Before a public utility replaces or removes a utility pole or an underground facility located in the Town of Westfield, which utility pole or underground facility does not necessitate a permit as required by this Chapter, the public utility shall notify the Town Engineer in writing, which may be by letter or e-mail, not less than 48 hours before undertaking any excavation related to the replacement or removal of the utility pole or underground facility, which pole or underground facility is used for the supplying and distribution of electricity for light, heat or power or for the furnishing of water service or telephone or other telecommunications service on or below a public right-of-way in the Town. The Town Clerk of the Town of Westfield shall notify any public utility that provides service in the Town of the application of the provisions of this Article.
- b. For the purposes of this Article, “underground facility” means one or more underground pipes, cables, wires, lines, or other structures used for the supplying and distribution of electricity for light, heat, or power or for the providing of water service or for the furnishing of telephone or other telecommunications service.

Sec. 17-4.2. Restoration Required. After completing the placement, replacement, or removal of a pole or an underground facility pursuant to this Article, the public utility shall remove from such right-of-way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property, including but not limited to the installation of hot patch as needed to restore the property within the right-of-way to its previous condition as much as possible. As used in this Article, “hot patch” means the installation of a mixture of asphalt to restore property within the right-of-way to its previous condition subsequent to the construction or excavation of a site for the placement or replacement of a pole or an underground facility pursuant to this Article. The Town Engineer shall approve the method of restoration which may include infrared pavement repair.

Sec. 17-4.3. Permit Expiration

- a. A permit for any small wireless facility shall be valid for a period of 15 years unless the Administrative Review Team authorizes a longer period, or the permit is revoked. At the end of such period, the permit shall expire.
- b. A permittee may apply for extensions of its permit in increments of no more than ten years and no sooner than twelve months prior to expiration of the permit.
- c. If a permit has not expired at the time an application is made for an extension, the Administrative Review Team may extend the term of the permit for subsequent ten-year

terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of the Westfield Town Code that are in effect at the time the permit extension is granted.

- (1) At the Administrative Review Team's discretion, additional studies and information may be required of the applicant.
- (2) If the Administrative Review Team determines that the small wireless facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the Westfield Town Code that are then in effect at the time of permit expiration, the Administrative Review Team may approve, conditionally approve, or deny the extension.

Sec. 17-4.4 Cessation of Use or Abandonment

- a. A small wireless facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- b. The operator of a small wireless facility shall notify the Town in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Town Engineer of any discontinuation of operations of 30 days or more.
- c. Failure to inform the Town Engineer of cessation or discontinuation of operations of any existing small wireless facility as required by this section shall constitute a violation of any approvals and be grounds for:
 - (1) Prosecution;
 - (2) Revocation or modification of the permit;
 - (3) Calling of any bond or other assurance required by this Chapter or conditions of approval of the permit;
 - (4) Removal of the wireless telecommunications facilities by the Town in accordance with the procedures established under such applicable sections of Articles VI and X of the Exterior Property Maintenance Code; and
 - (5) Any other remedies permitted under the Westfield Town Code.

Sec. 17-4.5 Revocation

- a. Grounds for revocation. A permit granted under this Chapter may be revoked for noncompliance with any enforceable permit, permit condition, or legal provision

applicable to the small wireless facility.

b. Revocation procedures.

- (1) When the Town Engineer finds reason to believe that grounds for permit revocation exist, the Town Engineer shall send written notice by certified U.S. mail, return receipt requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice, but no more than thirty days unless authorized by the Town Engineer, to cure the noncompliance or show that no noncompliance ever occurred.
- (2) If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the Administrative Review Committee shall conduct a noticed public hearing to determine whether to revoke the permit for uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the Administrative Review Committee. After the noticed public hearing, the Administrative Review Committee may revoke or suspend the permit when it finds that the permittee had notice of the noncompliance and remained in noncompliance with an enforceable permit, permit condition or law applicable to the facility. Written notice of the Administrative Review Committee's determination and the reasons therefor shall be dispatched by certified U.S. mail, return receipt requested, to the permittee's last known address. Upon revocation, the Administrative Review Committee may take any legally permissible action or combination of actions necessary to protect public health, safety, and welfare.

Section 17-4.6. Removal and Restoration, Permit Expiration, Revocation or Abandonment

- a. Permittee's removal obligation. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner, or operator shall remove its small wireless facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the Town. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the Town. The small wireless facility shall be removed from the site within 30 days, at no cost or expense to the Town.
- b. Failure to remove. Failure of the permittee, owner, or operator to promptly remove its small wireless facility and restore the property within 30 days after expiration, earlier

termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the Westfield Town Code, and be grounds for:

- (2) Calling of any bond or other assurance required by this Chapter or conditions of approval of permit;
- (3) Removal of the facilities by the Town in accordance with the procedures established under such applicable sections of Articles VI and X of the Exterior Property Maintenance Code; or
- (4) Any other remedies permitted under the Westfield Town Code.

- c. Summary removal. In the event the Town Engineer determines that the condition or placement of a small wireless facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), the Town Engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- d. Removal of wireless telecommunications facilities by Town. In the event the Town removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the Town for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the Town may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with the Westfield Town Code. Unless otherwise provided herein, the Town has no obligation to store such facility. Neither the permittee nor the owner nor operator shall have any claim if the Town destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the Town due to exigent circumstances.

Sec. 17-4.7. Violations and Penalties.

- a. In the event that a utility service operator or the operator of a small wireless facility does not meet the requirements of this Article IV concerning the removal of debris and the restoring of property, including but not limited to the installation of a hot patch, within a right-of-way to its previous condition within 90 days of placement, replacement or removal of a pole or an underground facility, said public utility will be fined up to an amount not to exceed \$100 each day until the requirements of this Article IV are met, except that if the public utility or small wireless facility operator is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility or small wireless facility operator shall not be required to complete the hot patch installation until 60 days

immediately following the end of the November through April period.

- b. At least five business days prior to the end of the ninety-day period established by this section, the municipality shall notify the public utility or small wireless facility operator that the penalties authorized by this section shall begin to be assessed against the public utility or small wireless facility operator after the end of the ninety-day period unless the utility complies with the requirements of this Article.
- c. Any penalty imposed shall be collected or enforced in a summary manner, without a jury, in any court of competent jurisdiction according to the procedure provided by the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10, et seq. The Superior Court and Municipal Court shall have jurisdiction to enforce the provisions of this Article. In the case of removal or replacement of a pole or an underground facility utilized by two or more public utilities or small wireless facility operators, the entity last removing its pipes, cables, wires, lines, or other structures shall be liable for the removal and restoration required under this Article unless a written agreement between the respective public utilities or small wireless facility operators provides otherwise.

Sec. 17-4.8. Emergency Conditions.

Under emergency conditions which significantly impact the placement of a pole or underground facility resulting from natural forces or human activities beyond the control of the public utility or small wireless facility operator, or which pose an imminent or existing threat of loss of electrical, water, power, telephone, or other telecommunications service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility or small wireless facility operator to prevent bodily harm or substantial property damage from occurring, the provisions of this Article shall not apply when the public utility or small wireless facility operator undertakes any construction or excavation related to the placement, replacement or removal of a pole or an underground facility in response to such an emergency, provided that the public utility or small wireless facility operator undertaking such construction or excavation notifies the Town Engineer at the earliest reasonable opportunity and that all reasonable efforts are taken by the public utility or small wireless facility operator to comply with the removal and restoration requirements of this Article after responding to the emergency.

SECTION II. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION III. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION IV. This Ordinance shall take effect after passage and publication in the manner provided by law.

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2022-05**

**AN ORDINANCE AMENDING CHAPTER 24 OF THE TOWN
CODE, RELATING TO STREET OPENINGS AND EXCAVATIONS**

WHEREAS, the Mayor and Town Council of the Town of Westfield (the “Town”) are charged with establishing and maintaining safe passage and safe conditions within the Town of Westfield; and

WHEREAS, the Mayor and Town Council previously passed General Ordinance No. 2139 on July 9, 2019, to create a five-year moratorium on road openings within the Town; and

WHEREAS, from time-to-time, it is necessary to update the policies and procedures in place regarding the issuance of road opening permits and, in particular, the provisions for the restoration requirements for these permits, within the Town to ensure the health, safety, and welfare of the residents of the Town.

WHEREAS, the road opening and road open moratorium requirements were further clarified and amended in G.O. 2169 and G.O. 2196; and

WHEREAS, the Mayor and Town Council have determined that it is again necessary to further refine the regulations relating to road openings in order to ensure that residential property owners who desire to convert from oil heat to generally cheaper and more efficient gas heat, can do so without the potentially punitive effects of having to pave a large portion of their streets in order to effectuate that conversion;

NOW, THEREFORE, BE IT RESOLVED:

SECTION I. Chapter 24, “Streets and Sidewalks,” Article II, “Street Openings and Excavations,” Section 24-11, Requirements for Issuance of Permits” of the Town Code shall be and is hereby amended as follows:

Sec. 24-11. Requirements for Issuance of Permits.

.....

(k) Requirements for “Moratorium” Roads

- (1) After the Town has paved or repaved any street of the Town of Westfield, no excavation permit shall be issued for openings, cuts, or excavations in said street for a period of seven years from the date of such paving, subject to the exceptions described herein.

- (2) The Town Engineer shall keep a list of all such streets subject to this seven-year moratorium, which may be inspected in the Office of the Town Engineer.
- (3) Prior to the start of any such paving or repaving work, the Town Engineer shall notify each utility company of said work so any in-progress or contemplated excavations may be completed before paving is started. Such notice shall state that no excavation permit shall be issued for openings, cuts, or excavations in said street for a period of seven years from the date of such paving. The notice shall also provide that applications for excavation permits for work to be done prior to such paving or repaving shall be submitted promptly so that any work may be completed not later than 90 days from the date of such notification.
- (4) During such seven-year period, the applicant must restore the street opening. Such restoration must include pavement restoration (milling and repaving) for the full width of the roadway to a distance of 100 feet around the area of the opening. Notwithstanding these requirements, the Town Engineer may, in his/her sole discretion, waive the requirements of this subsection under the following circumstances:
 - i. Where necessary, as determined by the Town Engineer. For example, if there is an excavation on a small cul-de-sac of less than 100 feet in length within the Town, or if such a distance will unreasonably interfere with an existing utility, the Town Engineer may use his/her discretion in determining the overall distance of the restoration.
 - ii. If, in the judgment of the Town Engineer, an emergency exists that makes it absolutely essential that the road be opened for purposes of a utility repair or replacement. When the owner(s) of a single-family residential property who actually resides in that property applies for a construction permit to convert from oil heat to gas heat.
- (5) In any circumstance in which the Town Engineer waives the curb-to-curb and/or 100-foot requirements above, the Town Engineer shall require that the street opening be patched and restored via infrared pavement repair technology so as to blend uniformly with the adjacent existing roadway.

SECTION II. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION III. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION IV. This Ordinance shall take effect after passage and publication in the manner provided by law.

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2022-06**

**AN ORDINANCE AMENDING ARTICLE 5, ENTITLED “FEES,
DEPOSITS, GUARANTEES AND OTHER PAYMENTS” OF THE LAND
USE ORDINANCE OF THE TOWN OF WESTFIELD**

WHEREAS, the last assessment and update of Subsection 5.02, entitled “Schedule of Fees” and Subsection 5.03, entitled “Payment for Professional Services and Other Expert Services” which both pertain to applications for development submitted to the Planning Board or Board of Adjustment within the Town of Westfield was completed 14 years ago, in 2008; and

WHEREAS, the Department of Planning and Zoning has researched fees charged by other municipalities in the State of New Jersey, compared those fees to those found in the Westfield Land Use Ordinance, and is recommending that both the application fees and escrow deposit requirements contained within the Town Land Use Ordinance be updated; and

WHEREAS, the Zoning Officer also reviews applications for development submitted to the Planning Board and Board of Adjustment, but under current ordinance may not bill escrow accounts for time spent on those applications. As a result, the costs of the Zoning Officer’s time spent on an application for development becomes the responsibility of all taxpayers and not just the applicant; and

WHEREAS, the Department of Planning and Zoning is recommending that the Westfield Land Use Ordinance be amended to permit the Zoning Officer’s time spent on an application for development be billed to an applicant’s escrow account; and

WHEREAS, fees charged cover the administrative costs associated with the review of an application for development and also defray the costs of tuition for those persons required to take the course in land use law and planning in the Town as required by the New Jersey Municipal Land Use Law; and

WHEREAS, the New Jersey Municipal Land Use Law allows for a municipality to require a developer to post guarantees for the installation and maintenance of all necessary improvements to ensure that there will be enough funding available for the completion of all necessary improvements in a development; and

WHEREAS, Subsection 5.04 of the Land Use Ordinance of the Town of Westfield, entitled “Inspection Fees; Required Deposit”, and Subsection 5.05, entitled “Performance and Maintenance Guarantees”, contains provisions for same, however, the last update to these sections was made in September of 1998; and

WHEREAS, the New Jersey Municipal Land Use Law has been amended in regard to provisions for performance, maintenance guarantees, and other guarantee requirements since that time and the Westfield Land Use Ordinance must be updated to reflect those amendments; and

WHEREAS, the proposed amendment to Subsection 5.04 and Subsection 5.05 is consistent with the New Jersey Municipal Land Use Law and makes the Town Land Use Ordinance current with New Jersey Municipal Land Use Law provisions.

NOW THEREFORE, BE IT ORDAINED by the Town of Westfield as follows:

SECTION I: §5.02 SCHEDULE OF FEES, is hereby deleted in its entirety and replaced with the following:

§ 5.02. SCHEDULE OF FEES.

There is hereby established in connection with the various applications for development and other matters which are the subject of this ordinance the following schedule of fees. Every applicant for development shall file with his application a filing fee as indicated in the following schedule. Requests for more than one (1) of the items listed below shall require the payment of separate fees for each item, the sum of which shall be the total fees to be paid. The fee for preliminary and final major subdivisions or site plan approval shall be considered cumulative and both shall be paid at the time of the application for preliminary approval.

A. Fees Required

Application Type	Fee
All "C" variances and exceptions, § 7.01C (Planning Board or Board of Adjustment, as applicable)	Detached one or two dwelling unit buildings: \$265 for the first variance, and \$100 per each additional variance
	Other: \$265 per variance
Each "D" variance, § 7.01D (Board of Adjustment):	Detached one or two dwelling unit buildings: \$500 per
	Other: \$1,000 per

Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street, § 7.01E or § 7.01F or for Certificates of Non-Conforming use, § 7.01H (Planning Board or Board of Adjustment, as applicable)	\$250
Appeal alleging erroneous decision of the Zoning Officer regarding the zoning regulations, § 7.02B (Board of Adjustment):	\$250
Interpretation of the zoning regulations, Zoning Map or Official Map, § 7.02C (Board of Adjustment):	\$500
Conditional use review, Article 18 (Planning Board)	\$300
Informal review of concept plan, § 8.07 (Planning Board)	\$250
Minor site plan, § 8.08 (Planning Board or Board of Adjustment, as applicable)	\$500
Minor subdivision, § 8.09 (Planning Board or Board of Adjustment, as applicable)	\$500
Preliminary major site plan, § 8.10 (Planning Board or Board of Adjustment, as applicable)	\$500, plus \$150 per 10k square feet over 20k square feet of lot area; plus \$20 per 1k square feet over 1k square feet of gross floor area
Preliminary major subdivision, § 8.10 (Planning Board or Board of Adjustment, as applicable)	\$1,000, plus \$250 per lot
Final major site plan, § 8.11 (Planning Board or Board of Adjustment, as applicable)	50% of preliminary application fee
Final major subdivision, § 8.11 (Planning Board or Board of Adjustment, as applicable)	50% of preliminary application fee
List of property owners within two hundred (200) feet of applicant's property from current tax duplicates, § 4.04C	\$.25 per name or \$10.00, whichever is greater.
Transcripts of Planning Board or Board of Adjustment hearings	Must be obtained from the court reporter.

Duplicate copies of any permit or certificate	\$10.00
Special Meeting of the Planning Board or Zoning Board of Adjustment	\$1,000.00 shall be paid to the Town of Westfield prior to setting the special meeting date.
Extension requests	\$100.00 shall be paid for any request to extend the expiration date of a development or variance approval to be heard by the Planning Board or Zoning Board of Adjustment.

SECTION II: §5.03 PAYMENT FOR PROFESSIONAL SERVICES AND OTHER EXPERT SERVICES, §5.03.A is hereby deleted in its entirety and replaced with the following:

A. Schedule of Deposits

The initial deposit for payment of professional services shall be as set forth on the following schedule, provided that if the Board Secretary determines that an initial deposit greater than indicated on the following schedule is necessary to reimburse the anticipated cost of professional services as relates to a particular application, such as, but not limited to circulation-intensive sites requiring the services of a traffic engineering consultant, the applicant shall be required to deposit said greater amount.

Application Type	Initial Deposit
Appeal for "C" variance, § 7.01C (Planning Board or Board of Adjustment, as applicable)	Detached one or two dwelling unit buildings: \$800
	Other: \$1,000
Appeal for "D" variance, § 7.01D (Board of Adjustment)	Detached one or two dwelling unit buildings: \$800
	Other: \$2,000
Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street, § 7.01E or § 7.01F or for Certificates of Non-Conforming use, § 7.01H (Planning Board or Board of Adjustment, as applicable)	\$250

Appeal alleging erroneous decision of the Zoning Officer regarding a zoning regulation, § 7.02B (Board of Adjustment)	\$500
Interpretation of the zoning regulations, Zoning Map or Official Map, § 7.02C (Board of Adjustment)	\$500
Conditional use review, Article 18 (Planning Board)	\$750
Informal review of concept plan, § 8.07 (Planning Board)	\$400
Minor site plan, § 8.08 (Planning Board or Board of Adjustment, as applicable)	\$750
Minor subdivision, § 8.09 (Planning Board or Board of Adjustment, as applicable)	\$750 per lot
Preliminary major site plan, § 8.10 (Planning Board or Board of Adjustment, as applicable)	\$5,000
Preliminary major subdivision, § 8.10 (Planning Board or Board of Adjustment, as applicable)	\$2,500 plus \$25 per lot
Final major site plans, § 8.11 (Planning Board or Board of Adjustment, as applicable)	If reviewed at same time as preliminary major site plan: none. If reviewed subsequent to preliminary major site plan: One half preliminary Major Site Plan escrow fee.
Final major subdivisions, § 8.11 (Planning Board or Board of Adjustment, as applicable)	½ the cost of the preliminary major subdivision escrow fee

SECTION III: §5.03 PAYMENT FOR PROFESSIONAL SERVICES AND OTHER EXPERT SERVICES, §5.03.D.1. is hereby amended to read as follows:

- Professional charges may include the services of a duly licensed engineer, surveyor, planner, architect, landscape architect, court reporter, traffic expert (can be unlicensed), attorney, realtor, appraiser or other expert providing professional services (whether as an employee of the Town or otherwise engaged by the Town) to ensure that an application complies with the standards set forth in this ordinance and other experts whose testimony is in an area or in areas where the Board requires further information.

SECTION IV: §5.03 PAYMENT FOR PROFESSIONAL SERVICES AND OTHER EXPERT SERVICES, §5.03E.1.b. is hereby deleted in its entirety. The existing §5.03E.1.c. shall be re-lettered respectively.

SECTION V: §5.04 INSPECTION FEES, REQUIRED DEPOSIT, is hereby deleted in its entirety and replaced with the following:

§ 5.04 INSPECTION FEES; REQUIRED DEPOSIT.

The obligor shall reimburse the Town of Westfield for reasonable inspection fees paid to the Town Engineer for the inspection of improvements as set forth in §5.05 of this article. Fees shall not exceed the sum of the amounts set forth in §5.04A.1 and §5.04A.2 of this article. Prior to the initiation of any construction approved pursuant to this ordinance, the developer shall deposit with the Board Secretary sufficient funds to reimburse the Town for inspection fees paid to the Town Engineer. Deposits shall be paid by cashier's check, certified check, or bank money order. The Town Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. Deposits shall be as follows:

- A. Not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under this article; and
- B. Not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under this article, which cost shall be determined pursuant to § 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4).
- C. For those developments for which the inspection fees total less than \$10,000, the fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- D. For those developments for which the inspection fees total \$10,000 or greater, the fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.
- E. If the Town of Westfield determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to this article, is insufficient to cover the cost of additional required inspections, the Town of Westfield may require the developer to

deposit additional funds in escrow provided that the Town of Westfield delivers to the developer a written inspection escrow deposit request, signed by the Town Engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.

F. Appeals for the amount charged for the inspection of improvements shall follow the procedures in §5.03H.

SECTION VI: §5.05 PERFORMANCE AND MAINTENANCE GUARANTEES, is hereby deleted in its entirety and replaced with the following §5.05, entitled **GUARANTEES REQUIRED; SURETY; RELEASE**:

§ 5.05 GUARANTEES REQUIRED; SURETY; RELEASE.

Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning approval pursuant to Subsection d. of § 52 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-65), the Town of Westfield may require and shall accept in accordance with the standards adopted herein and regulations adopted pursuant to § 1 of P.L. 1999, c. 68 (N.J.S.A. 40:55D-53a) for the purpose of assuring the installation and maintenance of certain on tract improvements, the furnishing of a guarantees in accordance with the following standards:

A. Form of guarantee. At least ten percent (10%) of the guarantee shall be in the form of cash or a certified check made payable to the Town of Westfield. The balance of the guarantee shall be in the form of any security issued by an institution authorized to issue such securities in the State of New Jersey and which may be accepted by the Town and approved by the Town Attorney, including but not limited to surety bonds, cash and letters of credit; provided that the Town shall only accept an irrevocable letter of credit if it:

1. Constitutes an unconditional payment obligation of the issuer running solely to the Town for an express initial period of time of at least one (1) year but no more than two (2) years from the date of final approval;
2. Is in the amount determined by the developer and approved by the Town Engineer or Town Council, as applicable, as provided herein, less the amount of any other forms of guarantee furnished;
3. Is issued by a banking or savings institution authorized to do and doing business in the State of New Jersey; and
4. Permits the Town to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the

provisions of this section thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

B. Performance Guarantees. The following standards shall apply to the administration of performance guarantees:

1. The developer shall furnish a performance guarantee in favor of the Town of Westfield in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the developer and approved by the Town Engineer, as appropriate, according to the method of calculation set forth in § 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4), for the following improvements as shown on the approved plans or plat; streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by the "Map Filing Law," P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.; repealed by § 2 of P.L. 2011, c. 217) or N.J.S.A. 46:26B-1 through 8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The developer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee for review and approval by the Town Engineer, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.
2. The Town of Westfield may also require a performance guarantee to include, within an approved phase or section of a development, privately owned perimeter buffer landscaping, as required by local ordinance or imposed as a condition of approval. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

C. Temporary Certificate of Occupancy Guarantees. The following standards shall apply to the administration of temporary certificate of occupancy guarantees:

In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the Town of Westfield in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy

for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, required pursuant to § 5.05B.1., which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Town Engineer. At no time may the Town of Westfield hold more than one guarantee or bond of any type with respect to the same line item. The "temporary certificate of occupancy guarantee" shall be released by the Town Engineer upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.

D. Safety and Stabilization Guarantees. The following standards shall apply to the administration of safety and stabilization guarantees:

A developer shall furnish to the Town of Westfield a safety and stabilization guarantee, in favor of the Town of Westfield. At the developer's option, a safety and stabilization guarantee may be furnished either as a separate guarantee or as a line item of the performance guarantee. A safety and stabilization guarantee shall be available to the Town of Westfield solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that: a. Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and b. Work has not recommenced within 30 days following the provision of written notice by the Town of Westfield to the developer of the Town of Westfield's intent to claim payment under the guarantee. The Town shall not provide notice of its intent to claim payment under a safety and stabilization guarantee until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Town shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

The amount of a safety and stabilization guarantee for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

The amount of a safety and stabilization guarantee for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows: \$5,000 for the first \$100,000 of bonded improvement costs, plus 2 1/2% of bonded improvement costs in excess of \$100,000 up to \$1,000,000,

plus 1% of bonded improvement costs in excess of \$1,000,000.

The Town shall release a separate safety and stabilization guarantee to a developer upon the developer's furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this subsection.

The Town shall release a safety and stabilization guarantee upon the Town Engineer's determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

E. Maintenance Guarantees. The developer shall post with the Town of Westfield, prior to the release of a performance guarantee required pursuant to § 5.05B.1., § 5.05B.2., or both § 5.05B.1. and § 5.05B.2. Except as specifically provided otherwise below, maintenance guarantees shall be administered in the same manner as performance guarantees as provided by this article.

1. The developer shall post with the Town, upon the inspection and issuance of final approval of the following private site improvements by the Town Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in § 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4).
2. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

F. Acceptance of guarantee from successor developer. A successor developer must furnish a replacement guarantee as a condition to the approval of a permit update under the State Uniform Construction code for the purpose of updating the name and address of the owner of property on a construction permit.

1. The governing body or approving authority shall not accept a replacement guarantee without securing:
 - a. Written confirmation from the new obligor that the intent of the new obligor is to furnish a replacement guarantee, relieving the predecessor obligor and surety, if any, of any obligation to install improvements, and
 - b. Written verification from the Town Engineer that the replacement guarantee is of an amount sufficient to cover the cost of the installation of improvements, but not to exceed 120%

of the cost of the installation, which verification shall be determined consistent with section 41 of P.L.1975, c.291 (C.40:55D-53).

2. An approving authority shall notify the governing body whenever it accepts a replacement guarantee. Notice shall contain a copy of the written confirmation of the new obligor's intent to furnish a replacement performance guarantee and the Town Engineer's written verification of the sufficiency of the amount of that replacement performance guarantee.

3. Within 30 days after receiving notice from the approving authority of its acceptance of a replacement guarantee, the governing body, by resolution, shall release the predecessor obligor from liability pursuant to its performance guarantee.

G. Exception for improvements related to other jurisdictions. In the event that other governmental agencies or public utilities are or will be the owner of the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Town for such utilities or improvements.

H. Time allowed for completion of improvements. Performance guarantees shall state the time period within which all improvements are to be installed by the developer. No performance guarantee shall run for a term longer than two years, except as provided otherwise by this article.

I. Extension of time allowed for completion of improvements. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the developer and approved by the Town Engineer according to the method of calculation set forth in § 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4) as of the time of the passage of the resolution.

J. Failure to complete improvements within time specified. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Town of Westfield for the reasonable cost of the improvements not completed or corrected, and the Town may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law," P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 et seq.).

K. Release of performance guarantee. Release of performance guarantees shall be in accordance with the following procedures:

1. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the Municipal Clerk, that the Town Engineer prepare, in accordance with the itemized cost estimate prepared by the developer and approved by the Town Engineer and appended to the performance guarantee pursuant to Subsection B of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the Town Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Town Engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.
2. The list prepared by the Town Engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Town Engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the Town Engineer and appended to the performance guarantee pursuant to Subsection B of §5.05.
3. The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Town Engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the developer and approved by the Town Engineer and appended to the performance guarantee pursuant to Subsection B of this §5.05. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Town Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements

not yet approved; provided that 30% of the amount of the total performance guarantee and safety and stabilization guarantee posted may be retained to ensure completion and acceptability of all improvements. The safety and stabilization guarantee shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the engineer and appended to the performance guarantee pursuant to this article, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70% of the total amount of the performance guarantee, then the Town of Westfield may retain 30% of the amount of the total performance guarantee and safety and stabilization guarantees to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a temporary certificate of occupancy guarantee has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Town of Westfield below 30%.

L. Failure of Municipal engineer or Town Council to act. If the Town Engineer or Town Council fails to act on the request for release of a performance guarantee within the time required herein, the obligor may apply to the court in the manner provided below; provided that nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Town Council or the Town Engineer.

1. If the Town Engineer fails to send or provide the list and report as requested by the obligor pursuant to Subsection K of this section within 45 days from receipt of the request, the obligor may apply to a court of competent jurisdiction in a summary manner for an order compelling the Town Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
2. If the governing body fails to approve or reject the bonded improvements determined by the Town Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Town Engineer's list and report, the obligor may apply to a court of competent jurisdiction in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost

estimate prepared by the Town Engineer and appended to the performance guarantee pursuant to Subsection B of §5.05; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

3. In the event that the obligor has made a cash deposit with the Town of Westfield or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a safety and stabilization guarantee, the Town of Westfield may retain cash equal to the amount of the remaining safety and stabilization guarantee.

M. Procedure for rejected bonded improvements. If any portion of the required bonded improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.

N. Right to contest. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Town Engineer.

O. Final approval by stages or sections of development. In the event that final approval is by stages or sections of development pursuant to Subsection a of § 29 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-38), the provisions of this section shall be applied by stage or section.

P. Improvements dedicated to the Town of Westfield. To the extent that any of the improvements have been dedicated to the Town of Westfield on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to this article, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Town Engineer.

SECTION VII. All ordinances or parts of ordinances in conflict or inconsistent with any part of this ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION VIII. In the event that any section, provision, or part of provision of this ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION

PUBLIC WORKS COMMITTEE

FEBRUARY 8, 2022

WHEREAS, a need existed for the contract rental of privately owned equipment for use by the Department of Public Works in the 2021 Leaf Collection Program, as provided for in Public Works account 137-246, and

WHEREAS, by Resolution 224-2021, dated September 28, 2021, various contracts were awarded to the low bidders to perform the necessary work, and

WHEREAS, N.J.A.C. 5:30 provides for increases in the contract price for unanticipated adjustments through Change Order and Council Resolution, and

WHEREAS, conditions were encountered during the leaf collection program that necessitated additional work from the equipment than had been originally anticipated, and

WHEREAS, Certificate of the Town Treasurer, certifying to the availability of adequate funds for the amended contract price, as described below, prepared in accordance with N.J.A.C. 5:30 1.10 has been furnished to the Town Clerk. The amended contracts, totalling of \$38,892, is to be charged to the Clean Communities Grant, account number G-01-15-137-201.

NOW THEREFORE BE IT RESOLVED, that Change Order No. 1 in the following amounts be authorized:

Messercola Excavating	reduce (\$16,948.00)
Ameritico Disposal	increase \$30,980.00
Jesco, Inc	increase \$22,560.00
Frank Galbraith & Son	increase \$2,300.00

BE IT FURTHER RESOLVED, that the proper Town Officials be, and they are hereby, authorized to make Final Payment and to effect whatever actions are necessary in the execution and discharge of this amendment for the **2021 Leaf Collection Program**.

TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
RESOLUTION NO

PUBLIC WORKS COMMITTEE

FEBRUARY 8, 2022

WHEREAS, on June 29, 2021, by resolution 160-2021, Stilo Excavation Inc. was awarded a contract with the Town of Westfield for the 2021 Improvement of Willow Grove Road as authorized by Special Ordinance (S.O.) 2212 under Account C-07-18-212-2A3, and

WHEREAS, N.J.A.C. 5:30 provides for increases in the contract price for unanticipated adjustments through Change Order and Council Resolution, and

WHEREAS, site conditions encountered during construction necessitated additional work items and more material than had been anticipated, and

WHEREAS, Certificate of the Town Treasurer, certifying to the availability of adequate funds for the changed contract price, as described below, prepared in accordance with N.J.A.C. 5:30 1. 10 has been furnished to the Town Clerk. Expenditure of funds is to be charged to S.O. 2212 under Purchase Order #21-02014.

NOW THEREFORE BE IT RESOLVED, that Change Order No. 1 in the amount of \$23,979.56 executed by David C. Battaglia, Town Engineer, be authorized, and

BE IT FURTHER RESOLVED that the proper Town Officials be, and they are hereby, authorized to effect whatever actions are necessary in the execution and discharge of Change Order No. 1, for the 2021 Improvement of Willow Grove Road, increasing the contract price from \$220,488.62 to \$244,468.18, and to make payment #2 in the amount of \$20,696.56.