

**BOROUGH OF SPRING LAKE
MAYOR AND BOROUGH COUNCIL
REGULAR MEETING
AUGUST 22, 2023**

Mayor Naughton called the Regular Meeting of the Mayor and Council of the Borough of Spring Lake to order at 7:00 P.M. with a moment of silent prayer. She then proceeded with the Pledge of Allegiance to the Flag. Mayor Naughton announced that the meeting is being held in accordance with the Open Public Meetings Act.

PRESENT: Mr. Hale, Mr. Erbe, Miss McDonough, Ms. Whalley, Mr. Sagui, Mayor Naughton

ABSENT: Mr. Judge

ALSO PRESENT: Katherine Beilin, Borough Attorney Associate
W. Bryan Dempsey, Borough Administrator & Deputy Borough Clerk
Dina M. Zahorsky, Borough Clerk

Public Comments: None

Proclamations, Presentations, & Special Guests: None

Workshop Discussions: None

Approval of Minutes:

Mr. Erbe offered a motion to approve the minutes of August 8, 2023, seconded by Miss McDonough.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Council Comments & Staff Reports:

Miss McDonough reported that a resident mentioned that in the parks there are not enough handicapped curb cuts. Mr. Dempsey said that he will take a look and maybe add a curb cut at Third Avenue since they will be paving. Ms. Whalley added that they can work with Mr. Avakian and take a look around the whole lake.

Ms. Whalley reported that Rich Clayton was reelected to be the Chairman for the BID (Business Improvement District).

Ms. Whalley reported that the pet adoption that the BID had last weekend during the sidewalk sales was a great success. The Associated Humane Society said that it was the best pet adoption they ever had. She thanked Jesse Pazos for coordinating with the Humane Society for this event.

Mr. Sagui reported that a water/sewer meeting needs to be scheduled.

Mr. Sagui reported that there are cracks going across a bunch of streets in town. These should be looked at before the cold season. Mr. Dempsey reported that they just crack sealed from the Community House to the Lake Como border on Third Avenue. Mr. Dempsey said he will take a look at it.

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Mayor Naughton reported that there is a request on the agenda for a fall beach sweep. Clean Ocean Action sends over the collection of data and one thing they noticed in 2022 was that there was a significant decrease in plastic shopping bags, straws, and Styrofoam containers. She thanked them for coming to clean the beach twice a year.

Borough Engineer’s Report: None

Borough Attorney’s Report: None

Borough Administrator’s Report:

Mr. Dempsey reported that the award for Third Avenue paving is on for approval tonight. The project will start later this week.

Mr. Dempsey reported that the bond ordinance is on for tonight to increase the amount for the Marucci Park building as well as the award of contract. This project will start around September 15. An electric service is being put in to allow for the use of the bathrooms and the platform tennis.

Mr. Dempsey reported that the roof on the Wells Fargo building will start on Monday.

Business Items Under Consideration:

a. Request – Clean Ocean Action – Fall Beach Sweep – October 21, 2023 – Mr. Erbe offered a motion to approve the request, seconded by Mr. Hale. All in favor. None opposed.

b. Request – Communications High School Beach Event – September 10, 2023 (September 17, 2023 rain date) – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

c. Request – Garden Club of Spring Lake – Garden Tour – June 26, 2024 – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

d. Request – St. Catharine School – Beach Picnic – September 9, 2023 (September 16, 2023 rain date) – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

e. Request – St. Rose High School – Surf Team – Pennsylvania Avenue – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

f. Request – Wall High School – Surf Team – Worthington Avenue – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

g. Request – NJ Firefighters Mutual Benevolent Association 5K – September 9, 2023 – Mr. Erbe offered a motion to approve the request, seconded by Miss McDonough. All in favor. None opposed.

Ordinances for Introduction: None

Ordinances for Adoption:

Mr. Erbe offered a motion to open the public hearing for Ordinance No. 2023-007, seconded by Mr. Hale.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

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NAYS: None
ABSENT: Mr. Judge
ABSTAIN: None

PUBLIC HEARING NOW OPEN

Mayor Naughton explained that this is an increase of a bond ordinance that was already approved. When the bids were submitted the cost of the building came in higher than expected.

Mr. Erbe offered a motion to close the public hearing for Ordinance No. 2023-007, seconded by Miss McDonough.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

PUBLIC HEARING NOW CLOSED

Mr. Erbe offered a motion to adopt Ordinance No. 2023-007, seconded by Miss McDonough.

**ORDINANCE NO. 2023-007 - BOND ORDINANCE PROVIDING A
SUPPLEMENTAL APPROPRIATION OF \$500,000 FOR THE
CONSTRUCTION OF THE MARUCCI PARK RECREATION BUILDING IN
AND BY THE BOROUGH OF SPRING LAKE, IN THE COUNTY OF
MONMOUTH, NEW JERSEY, AND AUTHORIZING THE ISSUANCE OF
\$475,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF
THE COST THEREOF.**

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF SPRING LAKE, IN THE COUNTY OF MONMOUTH, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The improvement described in Section 3(a) of this bond ordinance has heretofore been authorized to be undertaken by the Borough of Spring Lake, in the County of Monmouth, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the supplemental amount of \$500,000, such sum being in addition to the \$2,000,000 appropriated therefor by Bond Ordinance #2023-005 of the Borough, finally adopted June 27, 2023 (the "Original Bond Ordinance"), and including the sum of \$25,000 as the additional down payment required by the Local Bond Law. The additional down payment is now available by virtue of provision for down payment or for capital improvement purposes in one or more previously adopted budgets.

Section 2. In order to finance the additional cost of the improvement or purpose not covered by application of the additional down payment, negotiable bonds are hereby authorized to be issued in the principal amount of \$475,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement heretofore authorized and the purpose for the financing of which the bonds are to be issued is the construction of the Marucci Park Recreation Building, including all work and materials necessary therefor and incidental thereto, as described in the Original Bond Ordinance.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is \$2,375,000, including the \$1,900,000 authorized by the Original Bond Ordinance and the \$475,000 bonds or bond anticipation notes authorized herein.

(c) The estimated cost of the improvement or purpose is \$2,500,000, including the \$2,000,000 appropriated by the Original Bond Ordinance and the \$500,000 appropriated herein.

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Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 20 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$475,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

(d) An aggregate amount not exceeding \$400,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement. Of this amount, \$400,000 was estimated for these items of expense in the Original Bond Ordinance and no additional amount is estimated therefor herein.

Section 7. The Borough hereby declares the intent of the Borough to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of the Treasury Regulations.

Section 8. Any grant moneys received for the purpose described in Section 3 hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief

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financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Mr. Erbe offered a motion to open the public hearing for Ordinance No. 2023-008, seconded by Mr. hALE.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

PUBLIC HEARING NOW OPEN

Mayor Naughton explained that there is already an ordinance in place addressing the possibility of additional poles in town related to 5G. Our Attorney made a recommendation after some research and things that are going on in other towns. This ordinance has some amendments so that the Borough will have more control over the situation.

Mr. Erbe offered a motion to close the public hearing for Ordinance No. 2023-008, seconded by Miss McDonough.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

PUBIC HEARING NOW CLOSED

Mr. Erbe offered a motion to adopt Ordinance No. 2023-008, seconded by Mr. Hale.

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ORINANCE NO. 2023-008 - AN ORDINANCE OF THE BOROUGH OF SPRING LAKE, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING THE CODE OF THE BOROUGH OF SPRING LAKE BY REMOVING CHAPTER 330, ARTICLE VII ENTITLED "RIGHT-OF-WAY PERMITS" AND REPLACING IT WITH CHAPTER 330, ARTICLE VII ENTITLED "SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY"

WHEREAS, the Borough of Spring Lake ("Borough") is aware that certain technological developments have made access to its Municipal Rights-of-Way desirable by certain telecommunications companies for the placement of small cell wireless facilities, including but not limited to, the installation of antennas, small cells and other communication devices and associated equipment (collectively the "Small Cells"); and

WHEREAS, the Borough has determined that its Municipal Rights-of-Way, such as they are or may be, themselves constitute a valuable resource, finite in nature, and which exists as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and

WHEREAS, the Federal Communications Commission (FCC) has adopted an order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" WT Docket No. 17-79; WC Docket 17-84, which places a shot clock on municipal approval for the placement of Small Cells on Existing Poles and the placement of New Poles in the Municipal Right-of-Way; and

WHEREAS, the Federal Telecommunications Act preserves local governments' ability to manage the public Rights-of-Way on a competitively neutral and non-discriminatory basis 47 U.S.C. 332 (c)(7)(A); and

WHEREAS, New Jersey municipalities must give consent before a Small Cell, i.e., a small antenna, can be placed on existing poles pursuant to N.J.S.A. 48:3-19 and for the erection of new poles within the public Rights-of-Way pursuant to N.J.S.A. 48:17-10; and

WHEREAS, the FCC, in its recent order as modified/interpreted by the court in City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020), which provides that municipalities can impose aesthetic requirements on Small Cells where said requirement are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advance; and

WHEREAS, erecting New Poles and Ground level Cabinets in the Municipal Right-of-Way raise significant aesthetic and safety concerns and those concerns are especially pronounced along the beachfront as specifically regulated by Ch. 114 of the Borough code; and

WHEREAS, N.J. Admin. Code § 7:7-16.10 provides that new coastal development must be visually compatible with its surroundings including existing scenic resources, site design, and size, and must contain design elements which enhance public access to the waterfront; and

WHEREAS, the Borough has a specific obligation to its residents and visitors to protect its unique beachfront, related vistas and the highly unique passive recreational opportunities it affords to both; and

WHEREAS, the Borough's beachfront, boardwalk and adjacent areas are part of the Coastal Zone designated the New Jersey Coastal Area Facility Review Act and other laws that recognize and regulate such areas as a highly unique and valuable resource; and

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WHEREAS, the Borough has determined that it is necessary to set forth clear standards in relation to the siting of Poles, Cabinets and Antennas for the benefit of its citizens and any utilities which use or will seek to make use of said Municipal Rights-of-Way.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Spring Lake that Chapter 330, Article VII entitled "Right-of-Way Permits" is hereby stricken. Chapter 330, Article VII is now entitled "Small Wireless Facilities in the Right-of-Way" and is amended to read as follows:

§ 330-69 Definitions.

ADMINISTRATIVE REVIEW

Ministerial review of an application by the Designee and Borough Engineer, as preferred by the Borough, to determine whether the issuance of a permit is in conformity with the applicable provisions of this chapter.

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 Borough.

BOROUGH COUNCIL

Shall mean the Borough Council of the Borough of Spring Lake.

CABINET

Shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-Way,

ELECTRIC DISTRIBUTION SYSTEM

Shall mean the part of the electric system, after the transmission system that is dedicated to delivering electric energy to an end user.

EXISTING POLE

Shall mean a pole that is in lawful existence within the Municipal Right of-Way.

GROUND LEVEL CABINETS

Shall mean a Cabinet that is not attached to an existing pole and is touching the ground.

MUNICIPAL RIGHT-OF-WAY

Shall mean the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Borough as an easement or in fee simple ownership. This term also includes rights-of-way held by the County of Monmouth where the Borough's approval is required for the use of same pursuant to N.J.S.A, 27:16-6.

POLE

Pole means a legally constructed pole, such as a utility, lighting or similar pole made of wood, metal or other material as determined by the Borough, located or to be located within the Public Right-of-Way. A Pole does not include a Support Structure.

POLE MOUNTED ANTENNA

Shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells, and outside distributed antenna systems.

POLE MOUNTED CABINET

Shall mean a Cabinet that is proposed to be placed on an Existing or Proposed Pole.

PROPOSED POLE

Shall mean a Pole that is proposed to be placed in the Municipal Right of-Way.

REPLACE OR REPLACEMENT

Shall mean, in connection with an existing Pole or Support Structure, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure

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and in conformance with this Chapter and any other applicable regulations in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

RIGHT-OF-WAY AGREEMENT

Shall mean 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.

RIGHT-OF-WAY PERMIT

Shall mean an approval from the Borough setting forth the Utility's compliance with the requirements of this Chapter.

SMALL WIRELESS FACILITY

Shall mean a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of not more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the Antenna, including the preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.

SMART POLE

Shall mean a Decorative Pole that conceals, disguises or camouflages one or more Small Wireless Facility installation(s) and may include other features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for at least three (3) occupants and allow space for Borough use for other services and/or equipment. Smart Poles shall neither have protruding latches, external hinges, nor external cabling. The pole must be made of an inherently rust-resistant material (i.e. aluminum alloys or stainless steel). The design of the smart pole is within the exclusive discretion of Borough.

SURROUNDING STREETScape

Shall mean Existing Poles within the same right-of-way which are located within 500 feet of the Proposed Pole.

TOWER

Any structure in the public right-of-way built for the sole or primary purpose of supporting a wireless facility. A tower does not include a pole or support structure.

UTILITIES

Shall mean companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes.

UTILITY SERVICE

Shall mean electric, telephone, or cable service.

WIRELESS FACILITY

Shall mean the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility. Throughout this Ordinance, the terms "Communications Facility", "Wireless Facility" and "Small Wireless Facility" may be used interchangeably and shall be taken to refer to the same thing unless the context clearly indicates otherwise.

§ 330-70: Access to Public Right of Way.

Prior to obtaining a permit and installing in the Public R.O.W. any Communications Facility, or any Pole built for the sole or primary purpose of supporting a Communications Facility, a Utility Person shall enter into a Right of Way Use Agreement with the expressly authorizing use of the Public Right of Way for the Communications Facility or Pole proposed to be installed.

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- A. The term of the R.O.W. Use Agreement shall not exceed 15 (fifteen) years.
- B. The R.O.W. Use Agreement authorizes the Utility's non-exclusive use of the Public R.O.W. for the sole purpose of installing, maintaining and operating Small Wireless Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and to provide the services expressly authorized in the agreement subject to Applicable Codes and applicable laws, this Chapter and the terms and conditions of the agreement. The agreement authorizes use only of the public R.O.W. in which the Borough has an actual interest. It is not a warranty of title or interest in any Public R.O.W. and it does not confer on the Utility any interest in any particular location within the Public R.O.W. No other right or authority is granted except as expressly set forth in the R.O.W. License Agreement. Nothing herein shall authorize the use of the Borough's Poles or Support Structures, in the Public R.O.W, without express approval from the Borough. All use of the Borough's Poles or Support Structures in the Public R.O.W. shall require a separate agreement and the payment of separate fees for such use.
- C. The Utility shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, and Support Structures in the Public R.O.W. in a safe condition, and in good order and repair.
- D. The Utility shall provide insurance and indemnification of the Borough as described in the R.O.W. Use Agreement. The insurance coverage limits must be at least as broad as follows:
- a. Insurance. The Utility shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The Utility may use any combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non- contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by the Utility. Prior to the commencement of any work pursuant to this Ordinance the Utility shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Utility within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any of Utility or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance. Utility shall notify the Designee within fifteen (15) days of receipt of any claim or demand of Utility or its subcontractors, agents, employees, officer, servants, designees, guests, or invitees by any aggrieved party for any work or action made pursuant to this Ordinance. The Borough shall be named as an additional insured. Utility shall provide Borough with renewal insurance.
 - b. Indemnification. Utility, its successors, assigns, contractors, sub-contractors, agents, servants, officers, professionals, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Utility's actions under this Ordinance and costs in connection therewith except to the extent that such

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

§ 330-71: Right-of-Way Permit.

- A. Pre-Application Meetings- Prior to making a formal application and after entering into the ROW Agreement pursuant to Section 70 with the Borough for use of the Municipal Right-of-Way, all utilities must meet with the Zoning Officer to review the scope of the Utility's proposal. Following said meeting, the Zoning Officer may require the Utility to present the plan to the Borough Planning Board.
- B. Prior to approval of any application, the Borough may in its discretion require the Utility to hold a public meeting or open house and provide notice of same by regular mail to all property owners identified by the Borough Engineer as requiring notice.
- C. No person may construct, maintain, or perform any other work in the Public R.O.W. related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities without first receiving a Permit to the extent required under this Chapter, and any subsequent permits or authorizations required by applicable Laws or the Borough.
- D. The Utility shall not locate or maintain its Communications Facilities, Small Wireless Facilities, Support Structure or Poles to unreasonably interfere with the use of the Public R.O.W. by the Borough, by the general public or by other persons authorized to use or be present in or upon the Public R.O.W.
- E. The permitting process set forth herein may be revised, supplemented, or otherwise amended or replaced by resolution or amendment to this Ordinance of Borough Council at any time regardless of a pending permit application.
- F. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the Borough's Wireless Siting Plan formulated and regularly reexamined by the Borough Engineer.

§ 330-72: Location and Siting

- A. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit.
- B. Height. No Pole shall be taller than thirty-five (35) feet or 110% of the height of Poles in the Surrounding Streetscape, whichever is higher.
 - 1) Total height includes any antenna or other attachment to the pole.
- C. Distance from the curb line. No pole shall be farther than eighteen (18) inches from the curb line.
- D. Use of Existing Poles.
 - 1) A Utility applying for a permit to use the Borough Right-of-Way to install facilities as defined within this Chapter must first provide to the Borough a complete list or inventory of existing poles within the Borough that the carrier will or may use to install such facilities.

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- 2) Such inventory shall be viewed and inspected by the Borough within 30 days of receipt and the carrier shall be notified as to whether the designated poles are satisfactory. If any poles are rejected, the Borough shall notify the carrier of the pole(s) rejected and reasons for such rejection.
 - 3) Once the final list of agreed upon poles is complete, the list shall be submitted to Borough Council for approval by Resolution.
 - 4) Such approval shall be valid for five years from the date of approval. During that period, the carrier may, at any time, make use of the pre-approved poles by filing an application for a permit with the Zoning Officer. The Zoning Officer shall issue a Permit with any other necessary permits to follow in due course.
- E. Use of new or replacement poles. Once a Utility concludes, with the Borough's consent, that an existing pole or poles cannot be utilized to install facilities under this Chapter, the Utility may propose use of a replacement or additional pole within the Right-of-Way.
- F. Location, Safety and Aesthetics. No new pole shall be erected in the Right-of-Way unless it:
- 1) Is replacing an Existing Pole;
 - 2) Has been reviewed by the Borough's Planning Board;
 - 3) At the option of the Borough, is a Smart Pole, the design of which shall be subject to administrative review and approval by the Borough;
 - 4) Is located within the Municipal Right-of-Way;
 - 5) Is at least one thousand five hundred (1500) linear feet from any other Existing Pole or Proposed Pole, which is used to support a Small Wireless Facility;
 - 6) Does not inhibit any existing sight triangles;
 - 7) Allows adequate room for the public to pass and re-pass across the Right-of-Way;
 - 8) Is finished and/or painted so as to blend in compatibly with it's background and so as to minimize its visual impact on surrounding properties.
- G. Each Smart Pole must accommodate at least three (3) carriers per Small Wireless Facility deployment.
- H. Beachfront Facilities.
- 1) Erecting New Poles and similar facilities in the Municipal Right-of-Way raises significant aesthetic and safety concerns and those concerns are especially pronounced along the beachfront as specifically regulated by Ch. 114 of the Borough code; and
 - 2) The Borough has a specific obligation to its residents and visitors to protect its unique beachfront, related vistas and the highly unique passive recreational opportunities it affords to both; and
 - 3) The Borough's beachfront, boardwalk and adjacent areas are part of the Coastal Zone designated the New Jersey Coastal Area Facility Review Act and other laws, as well as general statements of public policy that recognize and regulate such areas as a highly unique and valuable resource; and
 - 4) Local governments may regulate small wireless facilities to seek "traditional zoning objectives of preventing deployments that are unsightly or out of neighborhood character." City of Portland v. United States, 969 F.3d 1020, 1042 (9th Cir. 2020).
 - 5) No Poles, Cabinets or similar facilities may be placed within 150 ft. of the beach, any dunes, mean high water line (as defined by the Coastal Area Facility Review Act. See N.J. Admin. Code § 7:7-2.2.) or Ocean Avenue (Route 18).
 - 6) Should a CAFRA permit be required, the Utility must obtain a CAFRA permit or establish that same is not required.

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- I. Any claim by a Utility of technical incompatibility, inability to use existing structure, or inability to collocate need to be proven by the Utility, not disproved by Borough. Validity of said claims by the Utility is reserved within the sole discretion of Borough.
- J. The Borough may require that any new poles installed by the Utility be Smart Poles.
- K. Pole Mounted Cabinets are permitted on Existing Poles, provided that each Cabinet:
 - 1) Does not exceed sixteen (16) cubic feet; and
 - 2) Is finished and/or painted and otherwise camouflaged, in conformance with the best available stealth technology methods, to blend in compatibly with its background and to minimize its visual impact on surrounding properties; and
 - 3) Does not inhibit sight triangles; and
 - 4) Allows adequate room for the public to pass and repass across the municipal right-of-way.
- L. Pole Mounted Antennas are permitted on Existing Poles, provided that each Pole Mounted Antenna:
 - 1) Does not exceed three (3) cubic feet; and
 - 2) Is finished and/or painted and otherwise camouflaged, in conformance with the best available stealth technology methods, to blend in compatibly with its background and to minimize its visual impact on surrounding properties; and
 - 3) Does not inhibit sight triangles; and
 - 4) Allows adequate room for the public to pass and repass across the municipal right-of-way.
- M. The Utility must provide a certification from a licensed structural engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.
- N. All wireless equipment associated with the Pole, including the wireless equipment associated with the antenna and any preexisting associated equipment shall not be more than sixteen (16) cubic feet in volume.
- O. The Utility shall upon completion of construction provide the Borough with as-built drawings and a map showing the location of the facility and equipment.
- P. Fewest Possible New Poles. The Utility shall use existing Poles, when possible, for the placement of its Small Wireless Facilities and shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet the coverage and capacity requirements.

§ 330-73: Restoration Requirements, Removal, Relocation, and Abandonment.

- A. The Utility, or its agent or contractor, shall restore, repair and/or replace any portion of the Public R.O.W. that is damaged or disturbed by the Utility's Communications Facilities, Poles, or work in or adjacent to the Public R.O.W.
- B. If the Utility fails to timely restore, repair, or replace the Public R.O.W. as required in this subsection, the Borough or its contractor may do so and the Utility shall pay the Borough's costs and expenses in completing the restoration, repair or replacement.
- C. Within 90 days following written notice from the Borough, the Utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles or Support Structures within the Public R.O.W., including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Borough has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any Borough improvement, the operations of the Borough in, under or upon the Public R.O.W., or otherwise is in the public interest. The Utility shall be responsible to the Borough for any damages or penalties it may incur because of the Utility's failure to remove or relocate Communications Facilities, Poles or Support Structures as required in this subsection. If removal or

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relocation is requested by the Borough, the Borough will work in good faith to identify a suitable alternative site and such removal or relocation shall not require an additional permit.

- D. The Borough retains the right and privilege to cut or move any Communications Facility, Pole or, Support Structure located within the Public R.O.W. of the Borough, as the Borough may determine, in its sole discretion, to be necessary, appropriate, or useful in response to any public emergency. If circumstances permit, the Borough shall notify the Utility and give the Utility an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole or Support Structure. In all cases, the Borough shall notify the Utility after cutting or removing the Communications Facility, Pole, or Support Structure as promptly as reasonably possible. Emergency response shall be coordinated between the Borough and Utility to the extent practicable under the circumstances.
- E. A Utility shall notify the Borough of abandonment of any Communications Facility, Pole Support, or Structure at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the Utility shall remove its Communications Facility, Pole, or Support Structure at the Utility's own expense, unless the Borough determines, in its sole discretion, that the Communications Facility, Pole or Support Structure may be abandoned in place. The Utility shall remain solely responsible and liable for all of its Communications Facilities, Poles, and Support Structures until they are removed from the Public R.O.W. unless the Borough agrees in writing to take ownership of the abandoned Communications Facilities, Poles, or Support Structures. The Utility shall remain liable for annual R.O.W. occupancy fee for balance of term.
- F. If the Utility fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles or Support Structures or remove any of its abandoned Communications Facilities, Poles or Support Structures as required in this subsection, the Borough or its contractor may do so and the Utility shall pay all costs and expenses related to such work, including any delay damages or other damages the Borough incurs arising from the delay.

§ 330-74: Fees, Charges, and Applications.

- A. Every Right-of-Way Permit application must include a Right-of-Way Permit Fee in the following amounts:
 - 1) For applications that do not include the installation of any new structures within a Public Right-of-Way, the application fee shall be \$500 for up to five Communications Facilities with an additional \$100 for each Communications Facility beyond five.
 - 2) For applications that include the installation of a new structure within a Public Right-of-Way, the application shall be \$1,000 for up to five Communications Facilities with an additional \$100 for each Communications Facility beyond five.
 - 3) In addition to the Right-of-Way Permit Fee, the Zoning Officer may, in his or her own discretion, require the posting of a two thousand five hundred-dollar (\$2,500) Deposit towards Anticipated Municipal Expenses related to an application made pursuant to this Chapter. The Utility's Deposit towards Anticipated Municipal Expenses shall be placed in an escrow account.
 - 4) The Deposit shall be held in escrow to be billed against actual incurred costs. Any expenses above the escrow shall be invoiced to the Utility directly and shall be paid by the Utility prior to the issuance of any Permit.
 - 5) The Chief Financial Officer shall, upon request by the Utility after a final decision has been made by the Borough Commission regarding his or her pending Right-of-Way Permit

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application, refund any unused balance from the Utility's Deposit towards Anticipated Municipal Expenses.

- 6) The Annual ROW Occupancy Rate shall be \$350 per year per Small Wireless Facility and shall be paid within thirty (30) days of the issuance of the applicable Permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the Term. However, under no circumstances shall the Rate be remitted later than ninety (90) days after the full execution of the applicable Right-of-Way Use Agreement between Borough and the Utility.
 - 7) Other Fees. The Utility shall be subject to any other generally applicable fees of the Borough or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Utility shall pay as required in the applicable Laws, as well as attachment fees for the use of the Borough owned Poles, Support Structures, ducts, conduits or other structures in the Public R.O.W., as set forth in attachment agreements authorizing such use.
- B. Permit Required. Unless expressly authorized in this Chapter or in writing by the Borough, no Person may construct, install, modify, expand, alter or maintain in the Public R.O.W. any Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, including the installation or Collocation of Communications Facilities on existing Poles, Support Structures or other structures within the Public R.O.W. without first receiving a Permit. Notwithstanding the foregoing, in the event of an emergency, a Utility or its duly authorized representative may work in the Public R.O.W. prior to obtaining a Permit, provided that the Utility shall attempt to contact the Borough prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than 24 hours, after commencing the emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- C. All applications made under this section shall be expedited to comply with the shot clocks set forth in the Federal Communications Commission Order titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 17-84.
- D. The Application shall be made by the Utility or its representative and shall contain the following:
- 1) A description of the proposed work and the purposes and intent of the proposed Communications Facility, Pole, Support Structure or Small Wireless Facility (as applicable) sufficient to demonstrate compliance with the provisions of this Chapter.
 - 2) If applicable, a copy of the authorization for use of the property from the Pole or Support Structure owner on or in which the Communications Facility will be placed or attached.
 - 3) Detailed construction drawings regarding the proposed Communications Facility, Pole, Support Structure or Small Wireless Facility (as applicable). Construction drawings shall include, at minimum, a clear delineation of the right-of-way, distance of the proposed Communications Facility, Pole or Support Structure from certain existing right-of-way features such as curb ramps for handicap accessibility pursuant to the Americans with Disabilities Act, sidewalk width and other details standard for these types of telecommunications installations in the public right-of-way.
 - 4) Prior to installation of Communications Facility, including but not limited to Collocation on a Pole or Support Structure, a structural report performed by a duly licensed engineer

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evidencing that the Pole or Support Structure will structurally support the Communications Facility in accordance with Applicable Codes.

- 5) For any new aboveground facilities, accurate visual depictions or representations.
 - 6) The Utility shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Utility shall further certify that they will encourage, manage, and coordinate the location and placement of any interested carrier's equipment on the structure.
 - 7) The application and permitting processes set forth herein may be revised, supplemented, or otherwise amended or replaced by resolution of the Borough.
- E. Every application for a Proposed Pole made pursuant to this Chapter must include a stamped survey prepared by a New Jersey licensed surveyor demonstrating that any such Proposed Pole is located within the Municipal Right-of-Way. Any such application which does not include such a survey shall immediately be deemed incomplete.
- F. Material Changes. Unless otherwise agreed to in writing by the Borough, any material changes to an Application, as determined by the Borough in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Chapter, unless otherwise provided by application Laws.
- G. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of 365 days after issuance, provided that the period may be extended for up to an additional 180 days upon written request for the Utility (made prior to the end of the initial 365-day period) if the failure to complete construction is because of circumstances beyond the reasonable control of the Utility.
- H. Batch Permit. A Utility may simultaneously submit no more than five (5) Applications for Communications Facilities, or may file a single, consolidated Application covering such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Borough. If the Utility files a consolidated application, the Utility shall pay the application fee calculated as though each Communications Facility were a separate Application.
- I. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Utility or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable laws and shall notify the Borough in writing at least 48 hours before performing the Ordinary Maintenance and Repair. Notwithstanding the foregoing, the Borough reserves the right to inspect the Utility's Small Wireless Facilities at any time to determine if the existing configuration matches the configuration contained in the most recently issued Permit, and the applicable Right-of-Way Use Agreement. The Utility shall bear costs for said inspections.
- J. If it is determined that an existing Small Wireless Facility is found to be larger than the dimensions specified in the most recently issued applicable Permit, then the Utility shall be in violation of this Chapter. The Utility shall receive notice from the Borough and, upon receipt of such notice, be required to restore the site within ten (10) days to the configuration of the most recently approved Permit or retroactively apply for Administrative Approval for the unapproved modifications.

§ 330-75: Third Party Review, Preexisting Sites and Municipal Agreements

- A. Telecommunications carriers use various methodologies and analysis tools, including geographically based computer software, to determine the specific technical parameters of facilities, such as expected coverage area, antenna configuration and topographic constraints that affect signal paths. In certain instances, there may be a need for expert review by a third party of the technical data submitted by the Utility. The Borough may require such a technical review to be paid for by the Utility for a telecommunications facility.

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- B. The selection of the third-party expert may be by mutual agreement between the Utility and the Borough or at the discretion of the Borough, with a provision for the Utility and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to be a site-specific review of technical aspects of the facilities and not a subjective review of the site selection.
- C. Based on the results of the third-party review, the Borough may require changes to the application for the facility that comply with the recommendation of the expert.
- D. Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of the provisions of this Chapter, whether a Right-of-Way Use Agreement exists or is in force and effect regarding same, shall be required to comply with the provisions of this Chapter.
- E. Any Right-of-Way Use Agreements entered between the Borough and any Utility regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Chapter. To the extent the provisions of any existing such agreement conflict with this Chapter, said provisions, at the discretion of the Borough, shall be replaced and superseded by the applicable terms of this Chapter.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Consent Agenda:

Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

**R-23-133 - RESOLUTION - APPROVING RAFFLE LICENSE APPLICATION
RA#7-2023 – THE GARDEN CLUB OF SPRING LAKE -
ON-PREMISE 50/50**

WHEREAS, The Garden Club of Spring Lake has filed an application, which has been found to be complete, for a Raffle License which has been assigned number RA#07-2023, and

WHEREAS, said license has been forwarded to the Spring Lake Police Department for their review and no objection was received, and

WHEREAS, the appropriate fees and have been received and filed by the Borough Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Spring Lake that Raffle License No. RA#07-2023 be and the same is hereby approved as follows:

NAME: The Garden Club of Spring Lake
PO Box 487, Spring Lake, NJ 07762
Identification No.: 475-8-35025

LOCATION: The Breakers Hotel
1507 Ocean Avenue, Spring Lake, NJ

DATE: October 25, 2023 11:30 AM - 3:00 PM

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

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Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

**R-23-134 - RESOLUTION - APPROVING RAFFLE LICENSE APPLICATION
RA#8-2023 – THE GARDEN CLUB OF SPRING LAKE -
ON-PREMISE DRAW RAFFLE**

WHEREAS, The Garden Club of Spring Lake has filed an application, which has been found to be complete, for a Raffle License which has been assigned number RA#08-2023, and

WHEREAS, said license has been forwarded to the Spring Lake Police Department for their review and no objection was received, and

WHEREAS, the appropriate fees and have been received and filed by the Borough Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Spring Lake that Raffle License No. RA#08-2023 be and the same is hereby approved as follows:

- NAME:** The Garden Club of Spring Lake
PO Box 487, Spring Lake, NJ 07762
Identification No.: 475-8-35025
- LOCATION:** The Breakers Hotel
1507 Ocean Avenue, Spring Lake, NJ
- DATE:** October 25, 2023 11:30 AM - 3:00 PM

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

**R-23-135 - RESOLUTION – RELEASING STREET OPENING BOND
420 LUDLOW AVENUE – BLOCK 116, LOT 16**

WHEREAS a street opening application and appropriate fees was received by the Borough of Spring Lake from Allerton Fox Construction Services, LLC for property located at 420 Ludlow Avenue, Block 116, Lot 16 and

WHEREAS, a \$1,250.00 bond was posted for each property to ensure that the work was completed satisfactorily, and

WHEREAS, the Zoning Officer has inspected the site and found the work to be completed in accordance with Borough Ordinances and recommended the refund of the bond posted.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough of the Borough of Spring Lake that the above referenced street opening bond in the amount of \$1,250.00 be and the same is hereby authorized for return.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

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Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

R-23-136 - RESOLUTION – APPROVING ADDITIONAL RATES FOR THE SEASONAL PERSONNEL

BE IT RESOLVED by the Mayor and Council of the Borough of Spring Lake that the following list of individuals be appointed at an additional rate for the 2023 Season.

Beach Operation

Barbara Schmazel	Office/Pool	\$13.25
Kristen Ghidella	Badge Distribution	\$14.00
Vivian Gaskin	Office/Pool	\$13.25
Jerry Horn	Pool	\$13.25
Alexandra Birdsall	Badge Distribution	\$14.00
Jane Reardon	Badge Checker	\$12.93

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Resolutions:

Mr. Erbe offered the following resolution and moved its adoption, seconded by Mr. Hale.

**R-23-138 - RESOLUTION – AWARD OF CONTRACT #04-2023
MARUCCI PARK RECREATION BUILDING**

WHEREAS, on August 3, 2023 bids were received for Marucci Park Recreation Building, and

WHEREAS, seven (7) packages were picked up and seven (7) bids were received, and

WHEREAS, Shorelands Construction, Inc. Long Branch, NJ submitted the lowest responsible bid for the Marucci Park Recreation Building at a total bid of \$2,398,000.00 and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Spring Lake that Contract #04-2023 is hereby awarded to Shorelands Construction Inc., Long Branch, NJ for the Marucci Park Recreation Building at a cost not to exceed \$2,398,000.00.

CERTIFICATION AS TO AVAILABILITY OF FUNDS

I, Robbin Kirk, Chief Financial Officer of the Borough of Spring Lake hereby certify that funds are available from the following accounts Bond Ord 23-005/007 Acct #C-04-23-005-238 with an available balance of \$2,500,000 pending the estoppel period of amending ord 23-007.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Mr. Erbe offered the following resolution and moved its adoption, seconded by Mr. Hale.

**R-23-139 - RESOLUTION AUTHORIZING CHANGE ORDER NO. 3 - INCREASING
CONTRACT #04-2022 - 2022 ROADWAY IMPROVEMENT PROGRAM**

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WHEREAS, contract #04-2022 for Washington Avenue Main Improvements was awarded on July 12, 2023 to Black Rock Enterprises, LLC in the amount of \$583,351.50; and

WHEREAS, Engineer's Certificate includes Change Order #1 which increased the contract in the amount of \$5,000.00 for a total contract in the amount of \$588,351.50; and

WHEREAS, Engineer's Certificate includes Change Order #2 which decreased the contract in the amount of \$78,370.89 for a total contract in the amount of \$509,980.61; and

WHEREAS, Engineer's Certificate (annexed hereto and made a part hereof) includes Change Order #3 which increased the contract in the amount of \$2,445.84 for a total contract in the amount of \$512,426.45; and

NOW, THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Spring Lake that Change Order No. 3 increasing Contract #04-2022 for the 2022 Roadway Improvement Program in the amount of \$2,445.84 for a total contract in the amount of \$512,426.45 is hereby authorized for the above contract awarded to Black Rock Enterprises, LLC.

CERTIFICATION AS TO AVAILABILITY OF FUNDS

I, Robbin Kirk, Chief Financial Officer of the Borough of Spring Lake hereby certify that funds are available from the following accounts Reserve for Road Improvements Acct # C-04-55-226-001 with an available balance of \$479,349.06.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

**R-23-140 - RESOLUTION AUTHORIZING CONTRACT PURCHASE
OF A BREATHING AIR COMPRESSOR RECHARGING SYSTEM**

WHEREAS, the Mayor and Council of the Borough of Spring Lake wish to purchase of a Breathing Air Compressor Recharging System under NPPGOV Purchasing Contract #PS20095; and

WHEREAS, the purchase of goods and services by local contracting units is authorized by the Local Contracts Law, 40A:11-12; and

WHEREAS, the Fire Department recommends the utilization of this contract on the grounds that they can provide the quality of product at the most reasonable price; and

WHEREAS, the cost for the purchase of a Breathing Air Compressor Recharging System not to exceed \$46,253.00; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council that the purchase of a Breathing Air Compressor Recharging System be and is hereby ratified.

CERTIFICATION AS TO AVAILABILITY OF FUNDS

I, Robbin Kirk, Chief Financial Officer of the Borough of Spring Lake hereby certify that funds are available from Bond Ord 22-009 Acct # C-04-22-009-238 with an available balance of \$174,459.76.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

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Mr. Erbe offered the following resolution and moved its adoption, seconded by Mr. Hale.

**R-23-141 - RESOLUTION – AWARD OF CONTRACT #05-2023
IMPROVEMENTS TO THIRD AVENUE**

WHEREAS, on August 10, 2023 bids were received for Improvements to Third Avenue, and
WHEREAS, five (5) packages were picked up and five (5) bids were received, and
WHEREAS, Fernandes Construction, Inc., Monroe, NJ submitted the lowest responsible bid for the Improvements to Third Avenue at a total bid of \$437,309.81 and
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Spring Lake that Contract #05-2023 is hereby awarded to Fernandes Construction, Inc, Monroe, NJ for the Improvements to Third Avenue at a cost not to exceed \$437,309.81.

CERTIFICATION AS TO AVAILABILITY OF FUNDS

I, Robbin Kirk, Chief Financial Officer of the Borough of Spring Lake hereby certify that funds are available from the following accounts Reserve for Road Improvements Acct # C-04-55-226-001 with an available balance of \$479,349.06.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Mr. Erbe offered the following resolution and moved its adoption, seconded by Miss McDonough.

R-23-142 - RESOLUTION – APPROVAL OF BILLS – AUGUST 22, 2023

WHEREAS, the Borough of Spring Lake received certain claims against it by way of vouchers received during the period ending August 22, 2023 and

WHEREAS, the Borough Finance Committee has reviewed said claims.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Spring Lake, County of Monmouth, that the following claims be certified by the Chief Financial Officer for approval and payment.

SUMMARY

CURRENT FUND (1)	689,093.86
GRANT FUND (2)	850.38
GENERAL CAPITAL FUND (4)	65,873.79
WATER/SEWER FUND OPERATING (9)	2,723.89
DOG TRUST (13)	1,000.00
ESCROW TRUST (15)	1,250.00
RECREATION TRUST (25)	46,044.09
BEACH OPERATING (81)	27,615.31
POOL OPERATING (91)	12,518.36
TOTAL	\$846,969.68

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

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ABSTAIN: None

Public Comments:

John McGlinchy, 305 South Blvd said that he is not against pickleball. There are six courts there now and does the Borough have to add more. It is a very loud sport. Mayor Naughton stated that unfortunately the Borough is already committed to the project. Mr. Dempsey reported that at the most there will be eight pickleball courts. Mayor Naughton asked the hours. Mr. Dempsey stated 8 am to dusk. Mr. McGlinchy said that the ordinance is not being enforced. Ms. Kirk stated that new signs were ordered. Mayor Naughton stated that the council will think about possible solutions.

Ram Atluri, 324 South Blvd stated that there are a lot of out-of-town people using the courts who do not care to follow the rules, he understands that it can't be limited to residents only. He suggested screens. Mr. Dempsey said he could look into screening however there are some concerns with safety issues with the screens.

Executive Session: None

Adjournment:

Mr. Erbe offered a motion to adjourn the meeting, seconded by Mr. Hale.

ROLL CALL:

AYES: Mr. Erbe, Mr. Hale, Miss McDonough, Mr. Sagui, Ms. Whalley

NAYS: None

ABSENT: Mr. Judge

ABSTAIN: None

Time of Adjournment: 7:25 pm

Respectfully submitted,



DINA M. ZAHORSKY
Borough Clerk

Approved at a meeting held on: September 12, 2023