

BOROUGH OF HOPATCONG

ORDINANCE 15-2024

**AN ORDINANCE OF THE BOROUGH OF HOPATCONG, COUNTY OF SUSSEX, AND STATE OF NEW JERSEY
REPLACING THE BOROUGH CODE, CHAPTER 205 STREETS AND SIDEWALKS**

BE IT ORDAINED by the Mayor and Council of the Borough of Hopatcong, County of Sussex, and State of New Jersey that the Code of the Borough of Hopatcong is hereby amended as follows:

SECTION I.

Chapter 205, Streets and Sidewalks is deleted in its entirety and Sections 205-1 through 205-24 are replaced as set forth in Section II.

SECTION II.

Article I, Street Openings is hereby replaced as follows:

Article I. EXCAVATION OF STREETS AND SIDEWALKS.

§ 205-1. Prohibited Activities.

No person shall cause:

- A. Any earth, soil, stone, rock, dirt, mud, dust, wastes, debris or other material of any kind whatsoever to be placed, spilled, dropped, thrown, scattered, blown, tracked, washed by water or otherwise deposited upon any street unless such material shall be removed as soon as reasonably practicable in a manner that will leave the street in an unobstructed, safe and clean condition;
- B. Any water to flow upon any street pavement or sidewalk, subject to freezing conditions;
- C. Any bulldozer, grader, street roller, backhoe or other vehicle or equipment having metal cleated treads to be operated upon, across or along the surface of any street pavement or sidewalk;
- D. Any bulldozer, grader, sheet roller, backhoe or other vehicle or equipment to be operated upon, across or along any street pavement, street curbing or sidewalk, unless adequate means are used to prevent any damage to such pavement or curbing; or
- E. Any culvert, gutter, storm drain or catch basin to be blocked, obstructed or interfered with in any manner.

§ 205-2. Regulated Activities.

No person shall, unless such person shall have a currently valid permit issued pursuant to the provisions of this section:

- A. Make any opening or excavation in, or disturb the surface of any street;
- B. Construct, install, repair, remove, alter or otherwise affect any street pavement, sidewalk, curb, gutter, culvert, catch basin, manhole, storm sewer, sanitary sewer, pipeline, conduit, underground cable, or any connection with any of the foregoing, in, upon, over, under or along any street; or
- C. Erect, place or maintain any barricade, barrier, wire, cable or other object in, upon, across, along or above any street; unless such person shall have a currently valid permit therefor issued pursuant to the provisions of this section.
- D. Construct, install, alter or otherwise affect any utilities within a municipal easement.

§ 205-3. Exempt Activities.

Notwithstanding any provision of this section, this section shall not apply to the installation of overhead electric and telephone wires, cables and poles by public utility companies, to work within a street solely for the purpose of the maintenance of earth surface, or to work related to sanitary sewer installation or maintenance, provided that the street pavement or sidewalk is not affected.

§ 205-4. Application for Permits.

A. County Roads. Application for a permit to open or do any work upon a County road shall be made directly to the County of Sussex and the applicant shall comply with all County rules and regulations and the special terms and conditions of any permit issued by the County of Sussex.

B. Borough Streets, Right-of-Ways, and Easements.

1. Form of Application. Every application for a permit to undertake any of the activities enumerated in subsection 204-1.3 of this chapter shall be made on forms obtained from the office of the Construction Code Official.

2. Application shall be made in writing for a permit for any excavation within any roadway, the maintenance of which is the responsibility of the Borough, for any purpose whatsoever. The application shall state the purpose of the excavation, namely, sewer, water, gas, telephone or any other purpose. The application shall be accompanied by an engineered plan, or sketch, drawn to scale, of the area to be disturbed, including proposed dimensions and restoration details, and shall also be accompanied by an application.

3. Submission of Plans. The permittee shall submit an engineering plan or sketch in duplicate to the Borough for approval. The plan shall have sufficient details to illustrate the proposed work to be performed. All temporary stock-piling areas and equipment storage areas shall also be identified on the plan.

4. Review of Application. The Borough Engineer shall review every application and either approve the issuance of a permit, with or without modifications or conditions endorsed thereon, or disapprove the application for reasons endorsed thereon. Whenever the issuance of a permit is approved, the Borough Engineer shall calculate the fee therefor in accordance with the provisions of subsection 204-1.6b of this chapter.

5. No opening or excavation shall be permitted within the surface of any public road, street or right-of-way under the control of the Borough upon which a permanent pavement has been placed within five years of the date of the application of such pavement, except in the event of an emergency. Notwithstanding the foregoing, the Borough Engineer may issue a permit for a road opening or excavation on a public road, street or right-of-way upon which a permanent pavement has been placed within less than five years from the date of application upon a demonstration by the applicant that denial of the permit would cause undue hardship.

6. Street openings within the paved or improved surface of any road, street or right-of-way shall be restricted between November 1 and April 15, except that the Borough Engineer, after consultation with the Superintendent of Public Works, shall have the authority to waive these requirements in instances where he determines that suitable weather conditions exist.

§ 205-5. Issuance of Permit; Fee; Expiration of Permit; Performance Guarantee.

A. Issuance of Permit. Upon approval of the issuance of a permit by the Borough Engineer or the Borough Clerk shall issue the permit upon payment of the fee required by paragraph b., and filing of the certificate of insurance required by paragraph c., below. The application and any modifications or conditions shall constitute the terms of the permit issued.

B. Fee. Application shall be made in writing for a permit for any excavation within any roadway, the maintenance of which is the responsibility of the Borough, for any purpose whatsoever. The application shall state the purpose

of the excavation, namely, sewer, water, gas, telephone or any other purpose. The application shall be accompanied by an engineered plan, or sketch, drawn to scale, of the area to be disturbed, including proposed dimensions and restoration details, and shall also be accompanied by an application fee of \$100 and an escrow deposit to cover the costs of inspections of:

1. \$300 for all openings up to 50 linear feet.
2. \$500 for all openings consisting of from 50 to 100 linear feet.
3. \$1,000 for openings more than 100 linear feet.

If a hardship waiver is obtained for a road opening permit where the road was paved within five years, the permit fee shall be increased as follows:

- (a) \$1,000 - If road was paved within the last two years.
- (b) \$750 - If road was paved three to four years ago.
- (c) \$500 - If road was paved five years ago.

C. Certificate of Insurance. Every person, including a public utility company, to whom a permit is issued pursuant to this section shall file a certificate of insurance naming the Borough as an additional insured showing that the person or persons performing the work for which the permit is issued is currently insured as follows:

1. Workers Compensation Insurance as required by the laws of the State of New Jersey.
2. Employer's Liability Insurance with limits equal to or greater than that of the Workers Compensation Insurance.
3. Comprehensive General Liability Insurance equal to or greater than:
 - (a) \$1,000,000 each occurrence.
 - (b) \$2,000,000 general aggregate.
 - (c) \$2,000,000 products completed operations.
 - (d) \$1,000,000 personal injury/advertising.
 - (e) \$100,000 fire damage (any one fire).
 - (f) \$10,000 medical payments.
4. Commercial Umbrella or Excess Liability Insurance equal to or greater than \$1,000,000.
5. Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit.

(d) Expiration of Permit. Every permit shall state thereon the date by which the work covered by the permit shall be completed, and the permit shall expire upon such date or six months after the approval of the permit whichever occurs later.

(e) Performance Guarantee. Whenever any street pavement or sidewalk is to be opened or excavated, the applicant shall deposit an additional amount calculated as follows:

1. No person shall be granted a permit to open any street or roadway or do any work within a Borough right-of-way unless a restoration deposit in accordance with the following schedule has been submitted to guarantee the proper restoration, replacement or repair of property damaged or destroyed by the permittee:

- (a) Lawn areas: \$10 per square yard.
- (b) Shoulder areas: \$20 per square yard.

- (c) Paved roads: \$30 per square yard.
- (d) Sidewalks: \$60 per square yard.
- (e) Curbsings: \$25 per linear foot.
- (f) Dirt or gravel roads: \$15 per square yard.

2. The minimum required deposit shall not be less than \$500 and the Borough Engineer may require deposits in excess of those listed above when, in his opinion, costs will exceed the stipulated amounts.

3. In lieu of posting a cash guarantee for the restoration deposit, the permittee may post a combination of cash and surety bond or irrevocable letter of credit, except that the minimum deposit of \$500, shall be cash only. The cash portion shall be not less than 50% of the total amount required and in the form of a certified check or money order. The remaining balance shall be guaranteed by the posting of a surety bond or an irrevocable letter of credit in form satisfactory to the Borough Attorney. Upon written request by a permittee, the Borough Engineer shall cause an inspection of the excavation to be made and shall submit his recommendations to the Borough Council for determination of a satisfactory restoration deposit.

4. In the event that a utility company or other similar entity will be regularly excavating within the Borough, a restoration deposit in the form of a surety bond may be posted with the Borough Clerk. The form and amount of said bond shall be approved by the Borough Engineer prior to the issuance of any street opening permits.

The purpose of this guarantee is to ensure the Borough's ability to restore the disturbed pavement to its original or better condition upon the applicant's inability or perform same. The guarantee may be in the form of cash, certified check, or bond acceptable to the Borough Attorney.

§ 205-6. Notice of Issuance of Permit to Departments Concerned.

Copies of approved applications, permits and any extensions thereof shall be forwarded by the Borough Clerk to the Borough Engineer, the Manager of the Department of Public Works, and Chief of Police.

If any contemplated project will completely obstruct any thoroughfare or make a length of more than 200 feet of any thoroughfare inaccessible for vehicular traffic for a period in excess of 24 hours, then a period of not less than 72 hours shall elapse after the issuance of the permit before the operation may be started. Unless otherwise approved by the Borough Engineer, where an excavation is to extend the full width of the road, only 1/2 of the excavation shall be made at one time, and shall be properly backfilled in accordance with subsection 204-1.8 of this chapter before the other half is excavated.

§ 205-7. Conduct of Work.

A. General. A permit issued pursuant to this section does not carry with it any right to make connections with any sanitary sewer or public utility. Separate permits to make such connections must be obtained from the Borough Clerk or utility company concerned.

Whenever the work done under any permit requires that water, gas or other public utility services will be interrupted, the person to whom the permit has been issued under subsection 204-1.6 of this chapter shall notify affected users of the periods of time when the services will not be available. Such notice shall be delivered in writing at least 24 hours prior to the interruption of service.

The applicant shall notify the Borough Engineer and the Department of Public Works of its intent to commence any work in the Borough's right-of-way no later than 48 hours prior to the commencement of work.

The applicant shall supply a current New Jersey "One-Call" confirmation number, to document compliance with the underground utility location law.

B. Traffic Protection. Every person to whom a permit is issued pursuant to this section shall be responsible for protecting both vehicular and pedestrian traffic from accident or injury. Such person shall provide suitable barriers, notices, caution signs, and nighttime flashing lights. All signs and signals shall be in accordance with the provisions of Title 39 of the New Jersey Statutes and amendments and supplements thereto.

C. Inspection of Work. The Borough Engineer may determine that the nature of the proposed work requires inspection to ensure that the approved plans and specifications are complied with.

D. Backfill and Replacement of Pavement. Every person to whom a permit is issued pursuant to this section shall backfill any excavation with temporary or permanent pavement in accordance with subsection **204-1.11**.

E. Conformance to Residential Site Improvement Standards. Every person to whom a permit is issued pursuant to this section shall perform any and all work to the Residential Site Improvement Standards as set forth at N.J.A.C. 5:21-1.1 et seq., the provisions of which are incorporated herein as though set forth at length.

F. As-Built Drawing. If deemed necessary, upon completion of the entire work, the permittee shall file plans with the Borough Engineer showing in full detail all the completed work.

§ 205-8. Performance Guarantee Release.

The Borough Engineer shall inspect the completed work no later than two years following inspection and completion of the work and determine whether additional work is necessary to correct any construction or road condition deficiencies that may have become apparent. If additional work is deemed necessary, the Borough Engineer shall notify the applicant by certified mail of the applicant's obligation to perform the additional work.

Failure of the applicant to make required repairs within 10 days of the date of the above-referenced certified mailing will authorize the Borough to make such repairs and utilize the performance guarantees as well as to secure from the applicant any additional monies that may be needed to restore the street properly according to the Borough Engineer.

The Borough shall be authorized to make such immediate repairs as may be necessary to correct emergency road conditions resulting from any road opening work at the cost of the applicant.

§ 205-9. Guarding.

A. It shall be the duty of the permittee to properly guard any excavation and storage piles by erecting suitable bafflers during the day and lights during the night, or warning signs and by providing a watchman if deemed necessary by the police and/or the Superintendent of Public Works, or his designee, and/or the Borough Engineer. All traffic control devices used on road or street construction or maintenance work shall conform to Chapter IV, "Work Zone" of the Manual on Uniform Traffic Control Devices (MUTCD). The permittee shall be liable for any neglect in safeguarding the traveling public. If the excavation extends the full width of the road, only one-half of the excavation shall be made at one time which shall be backfilled before the other half is excavated, so as not to interfere with traffic.

B. The plan for proposed interruptions or detouring of traffic shall be submitted to the Police Department for approval. Permittee shall notify the Municipal Clerk, Police Department, Fire Department, Emergency Medical Services and Transportation Coordinator of all boards of education serving the project area of approved traffic detour plans at least 48 hours prior to their implementation. Interference with pedestrian or vehicular traffic shall be reduced to a minimum and no greater part of the roadway shall be opened at any time than that approved by the Engineer. Transverse openings shall be restricted so that not more than one-half of the traveled way shall be obstructed at any time. Work shall be scheduled and executed to present a minimum of inconvenience to the public. Where feasible, transverse subsurface installations shall be made by the boring or jacking method. Steel plates shall be used as a protection on openings maintained overnight in the traveled way.

§ 205-10. Restoration of Surface.

- A. Any Borough road surface, sidewalk, curb, gutter, shoulder or grassed areas disturbed or destroyed by the permittee shall be restored by the permittee at his cost and expense to the same or better condition than it was before commencement of the work. No roads shall be encumbered for a longer period than is necessary to execute the work. If the work is not completed to the satisfaction of the Borough Engineer within a reasonable time, and after due notice to the permittee, the Borough Public Works Department may finish the work and deduct the cost of the same from the total deposit. After the work is completed by the Borough, any balance remaining from the total escrow deposit shall be returned to the permittee.
- B. The entire excavation shall be backfilled with dense graded aggregate, or other suitable, well-drained, select material. The Borough Engineer shall approve all backfill material used by the permittee. The backfill material shall be placed and tamped in layers not exceeding one foot in depth.
- C. Temporary pavement replacement shall be completed daily. During the interval between completion of backfill and the time of placement of base paving, all areas shall be maintained in a safe and satisfactory condition for normal traffic use. This shall be done by the use of minimum twelve-inch thickness of dense graded aggregate (DGA) or an approved equal. All new pavement replacement shall be made in kind, except that in no case shall it be less than a total of six inches compacted thickness. Unless otherwise directed by the Borough Engineer, temporary pavement shall consist of six-inch compacted thickness bituminous stabilized base course (NJDOT No. I-2) applied and rolled over a six-inch thickness of DGA to remain permanently in place as a sub-base. The finish surface of this course shall be brought to the existing pavement elevation. Pavement replacement in areas requiring more than six inches overall thickness shall consist of a minimum of three lifts of asphalt, and in no case shall one individual lift exceed four inches compacted thickness. The temporary pavement shall remain in place for a minimum of six months. The minimum temporary pavement width shall be two feet.
- D. After the approved settlement period, the permittee shall complete final restoration by using a milling machine to remove the top two inches of temporary pavement and a minimum one-foot width of the existing pavement along either side of the road opening. The milling shall be conducted so as to produce clean and straight edges. The temporary surface shall be broom swept free of dirt and debris. The existing temporary pavements surface shall receive a tack coat of asphaltic oil, Grade RC-O, or emulsified asphalt, Grade RS-1. The surface course shall then be placed and rolled even with the existing pavement. A two-inch thick (compacted thickness) bituminous concrete surface course of FABC Mix I-5 top (NJDOT No. I-5) shall be placed thereon, adequately crowned to provide drainage. The minimum final restoration width shall be 12 feet.
- E. For gravel surfaces, the surface course shall be six inches compacted thickness of Type 5, Class A, soil aggregate, or dense graded aggregate (DGABC).
- F. All materials and methods of construction shall comply with the New Jersey Department of Transportation Standard Specification for Road and Bridge Construction, dated 2007, and all revisions and amendments thereto.
- G. Unless otherwise approved by the Borough Engineer, all construction details shall comply with New Jersey Residential Site Improvement Standards.
- H. When it becomes necessary to open the paved section of any road, such opening shall not be less than two feet wide nor more than three feet at the top, nor shall any opening be less than eight feet square and the sides of such opening shall be perpendicular at the top converged towards the bottom so that the width at the bottom shall be less than, but not greater than, the width at the surface of the pavement.
- I. The permittee shall cut all pavement with saw or other equipment approved by the Engineer prior to excavation. The permittee shall cut back existing pavements using a milling machine, or equal means, to produce straight and clean lines along the existing pavement prior to placing final pavement.

J. Shoulders shall be replaced in kind or as otherwise directed by the Engineer. Where conditions require, surface treated gravel shoulders or any portion thereof shall be restored by applying two inches of bituminous material in place of the oil treatment. The base of all shoulders shall be restored as originally constructed.

§ 205-11. Emergency Opening.

Street openings may be made without the necessity of a written application in emergency situations, such as broken or frozen water mains or ruptured gas mains or other situations which would endanger public life, health and safety, provided that notice shall be immediately given to the Police Department and Department of Public Works and that written application for a permit shall be made to the Department of Public Works for approval by the Borough Engineer as soon as practical and, in any event, not exceeding 48 hours from the start of the excavation. The Borough Engineer may impose special conditions to restore the structural integrity of the new pavement.

§ 205-12. General Rules and Regulations.

A. No person shall place material of any description whatsoever, or vehicles or other equipment of any nature, upon any road or street, so as to interfere with the flow of water along the gutters or with traffic.

B. No excavation shall be opened for a distance of more than 200 feet at any single time. All excavations shall be backfilled and all equipment removed from the public right-of-way at the end of each day's work and at such times as may be required for noninterference with snow removal.

C. The Borough Engineer, Department of Public Works and the Police Department shall be notified 48 hours in advance of the exact time of starting work on all excavations, and 72 hours in advance of the replacement of the pavement base and surface courses.

D. All work performed and material furnished shall be in compliance with the rules, regulations and specifications of the Borough.

E. Work shall be completed to eliminate interference with subsurface utilities and their appurtenances unless permission for interference has been obtained from the proper authorities. No excavation which could endanger or damage trees or shrubbery shall be made without the Engineer's approval. Blasting is not generally approved and will only be permitted by special consent of the Borough Engineer.

F. The Borough Engineer reserves the right to impose special conditions when warranted.

G. The permittee shall indemnify and hold harmless the Borough of Hopatcong, its officers, employees and agents against all suits and costs of every name and description and from all damages and injuries.

H. If required by the Borough Engineer, permittee shall provide adequate public notice, to all impacted roads, not later than 72 hours prior to the construction.

§ 205-13. Enforcement.

The Borough Engineer is hereby designated as the officers to enforce the provisions of this section. This provision shall not, however, be construed as depriving members of the Borough Police Department of the power to prosecute violations of this section.

§ 205-14. Penalties.

Any person who violates any of the provisions of this section or who fails to comply with any of the requirements hereof shall be liable to a fine of not more than \$200 or to imprisonment for not more than 90 days, or to both such fine and imprisonment. Each and every day such violation continues shall be considered a separate offense.

§ 205-15. RIGHTS-OF-WAY - MAILBOXES.

A. Posts, stanchions or other support upon which mailboxes are placed may be located in the Rights-of-Way in accordance with United States Post Office Regulations. Mailboxes which exceed United States Post Office Regulations are not a permitted structure and remain in the Rights-of-Way solely at the expense and liability of the abutting property owner.

B. Should the Borough, through its required maintenance activities, destroy a post and/or mailbox properly placed in the Rights-of-Way, the Borough may reimburse the property owner the sum of \$50 for parts and labor or replace and install the post and/or mailbox with one of the Borough's selection. The property owner shall notify the Borough in writing whether the property owner seeks payment of \$50 or replacement as provided herein.

§ 205-16. SITING OF POLES, CABINETS AND ANTENNAS IN THE MUNICIPAL RIGHT-OF-WAY.

A. No person shall operate or place any type of pole-mounted antenna, cabinet or pole within the municipal right-of-way without first entering into a right-of-way agreement pursuant to the provisions of this section.

B. The terms of said right-of-way agreement shall include:

1. A term not to exceed 15 years;
2. Reasonable insurance requirements;
3. Fine for unauthorized installations;
4. A reference to the siting standards as set forth in this § 204-3; and
5. Any other items which may reasonably be required.

§ 205-17. Application to Utilities Regulated by the Board of Public Utilities.

A. Notwithstanding any franchise or right-of-way agreement to the contrary, all antennas, poles and cabinets proposed to be placed within the municipal right-of-way by a utility regulated by the Board of Public Utilities, or any other entity with legal access to the municipal right-of-way, shall be subject to the standards and procedures set forth in this § 204-3 and shall require right-of-way permits for the siting of poles, antennas and cabinets in the municipal right-of-way.

§ 205-18 Right-of-Way Permits, Siting Standards for Poles, Antennas and Cabinets in the Right-of-Way.

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. Pole siting standards:

1. Height. No pole shall be taller than 35 feet or 110% of the average height of poles in the surrounding streetscape, whichever is higher.

2. Location, safety and aesthetics. No pole shall be erected in the right-of-way unless it:

(a) Is used to bring utility service across the right-of-way to an existing or proposed development from an existing pole; or

(b) Is replacing an existing pole; or

(c) Approved pursuant to a land development application by either the Borough's Zoning Board of Adjustment or Planning Board pursuant a land use application; or

(d) Located on the opposite side of the street from the electric distribution system; and

(e) For sites in residential zones, is 200 linear feet from any other existing pole or proposed pole along the same side of the street, or for sites in nonresidential zones is 100 linear feet from any other existing pole or proposed pole along the same side of the street; and

(f) Is not located in an area with underground utilities; and

(g) Does not inhibit any existing sight triangles or sight distance; and

(h) Allows adequate room for the public to pass and re-pass across the municipal right-of-way;
and

(i) Is finished and/or painted, constructed and 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 to permit the colocation of additional pole-mounted antennas thereon.

C. Ground level cabinet site standards.

1. Ground level cabinets are prohibited in residential zones.

2. Ground level cabinets are permitted in nonresidential zones, provided that each ground level cabinet:

(a) Is less than 28 cubic feet in volume; and

(b) Is finished and/or painted to blend in compatibly with its background to minimize its visual impact on surrounding properties; and

(c) Does not inhibit an existing sight triangles or sight distance; and

(d) Allows adequate room for the public to pass and repass across the municipal right-of-way.

D. Pole-mounted antenna and pole-mounted cabinet siting standards.

1. Pole-mounted antennas are permitted on existing poles in all zones, provided that each pole-mounted antenna:

(a) Does not exceed three cubic feet in volume; and

(b) Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, to blend in compatibly with its background to minimize its visual impact on surrounding properties; and

(c) Does not inhibit sight triangles or sight distance; and

(d) Allows adequate room for the public to pass and repass across the municipal right-of-way.

2. Pole-mounted cabinets are permitted on existing poles in all zones, provided that each pole-mounted cabinet:

(a) Does not exceed 16 cubic feet; and

(b) Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, to blend in compatibly with its background to minimize its visual impact on surrounding properties; and

(c) Does not inhibit sight triangles or sight distance; and

(d) Allows adequate room for the public to pass and repass across the municipal right-of-way.

3. The Borough may also require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any pole-mounted antenna or pole-mounted cabinet and the structure on which it is proposed to be mounted.

§ 205-19. Application Process.

A. Preapplication meeting. While not required by the Borough, prior to making a formal application with the Borough for use of the municipal right-of-way, all applicants are advised to meet with the Borough Engineer to review the scope of applicant's proposal.

B. The Borough Council shall, by resolution, approve or disapprove every right-of-way permit application based on the recommendations provided to it pursuant to Subsection e below.

C. All applications made under this § 204-3 which trigger Federal Communications Commission shot clock rules pursuant to the Federal Communications Commission Order "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 shall be processed on an expedited basis.

D. Every application for a proposed pole 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. An application which does not include such a survey shall immediately be deemed incomplete.

E. The Borough Engineer shall review applications made pursuant to this § 204-3 and advise the Borough Council of his or her recommendation to approve or disapprove same. If he or she recommends that an application be disapproved, the factual basis for that recommendation must be transmitted to the Borough Council in writing.

F. If the Borough Council denies any application made under this § 204-3, it shall do so in writing and set forth the factual basis therefor.

§ 205-20. Waiver.

A. The Borough Council may, by resolution, waive any siting standard set forth in § 204-3.4 where the applicant demonstrates that 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 by the Federal Communications Commission Order "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.

§ 205-21. Right-of-Way Permit Fees and Deposit Towards Anticipated Municipal Expenses.

A. Every right-of-way permit application must include a right-of-way permit fee in the following amounts:

1. One to five collocation sites on existing poles: \$500.

2. Each additional collocation site on an existing pole: \$100.

B. Deposit towards anticipated municipal expenses.

1. In addition to the right-of-way permit fee, the Borough Engineer may, in his or her own discretion, require the posting of a \$2,000 deposit towards anticipated municipal expenses related to an application made pursuant to this § 204-3.

2. Applicant's deposit towards anticipated municipal expenses shall be placed in an escrow account. If said deposit contains insufficient funds to enable the Borough to perform its review, the Chief Financial Officer of the Borough or designee shall provide applicant a notice of insufficient balance. In order for review to continue, the applicant shall, within 10 days post a deposit to the account in an amount to be mutually agreed upon.

3. The Chief Financial Officer or designee shall, upon request by the applicant, and after a final decision has been made by the Borough Council regarding his or her pending right-of-way permit application, and subject to review by the Borough Engineer, refund any unused balance from applicant's deposit towards anticipated municipal expenses.

§ 205-22. Collocation Requirement.

Any applicant for a right-of-way permit shall, as a condition to the issuance of same, permit the collocation of pole-mounted antennas onto any new pole to the maximum amount that collocation is technically feasible which, in any event, shall not be less than two pole-mounted antennas.

§ 205-23. Miscellaneous Provisions.

A. Any approval received pursuant to this § 204-3 does not relieve the applicant from receiving consent from the owner of the land above which an applicant's facility may be located as may be required under New Jersey law, or the owner of any existing pole on which the facility may be mounted.

B. Applicant must, in addition to receiving a right-of-way permit, also receive all necessary road opening permits, construction permits and any other requirement set forth in the Revised Ordinances of the Borough of Hopatcong or state statutes.

C. The Borough'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 § 204-3. No such applicant shall be required to enter into a right-of-way agreement with the Borough.

D. Applicant must comply with all applicable state, local and federal regulations including.

E. Any agreement or right-of-way permit issued pursuant to this § 204-3 shall not supersede or in any way take the place of any local approvals or franchises which otherwise in the future may be required by applicant under the New Jersey Cable Television Act, N.J.S.A. 48:5A-1, et seq

§ 205-24. Violations and penalties. Any individual, person, firm or corporation who or which shall open, improve or assist in the opening or improving of any street or road for which a permit shall not have been issued, or who or which shall violate any provision of this article, shall, for each and every violation, be subject to a fine of not more than \$200 or to imprisonment for not more than 90 days, or both.

SECTION III. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

SECTION IV. This Ordinance shall take effect immediately upon (1) adoption; and (2) publication in accordance with the laws of the State of New Jersey.

Valerie A. Egan
Valerie Egan, Borough Clerk

Marie Galate
Marie Galate, Mayor

Introduced: 9/4/2024

Adopted: 9/18/2024

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Governing Body of the Borough of Hopatcong held on September 4, 2024, at 7:30 p.m. and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Mayor and Council to be held on September 18, 2024, at 7:30 p.m., or as soon thereafter as the Governing Body may hear this Ordinance at the Municipal Building, 111 River Styx Road, Hopatcong, New Jersey 07843, at which time all persons interested may appear for or against the passage of said Ordinance.

Valerie A. Egan
Valerie Egan, Municipal Clerk

CERTIFICATION

I, Valerie Egan, Clerk of the Borough of Hopatcong, do hereby certify that the Mayor and Council of the Borough of Hopatcong duly adopted the foregoing Ordinance on September 18, 2024.

Valerie A. Egan
Valerie A. Egan, Municipal Clerk