

## ORDINANCE 2013-1137

### AN ORDINANCE GOVERNING THE USE OF BOROUGH ROADS, STREETS, AND HIGHWAYS FOR TELECOMMUNICATIONS COMPANIES

#### **SECTION I. Use of Borough Roads, Streets and Highways**

1.1 **Definitions.** The following words and phrases shall have the following meanings in this section:

“Company” shall mean and apply to every telegraph and telephone company which has received permission pursuant to this ordinance.

“Permission” shall mean the permission which may be granted by the Borough pursuant to this ordinance.

“Telecommunications facilities” shall mean cables, poles, ducts, conduits and associated fixtures, process equipment and appurtenances used in connection with providing telecommunications services.

“Borough street” shall mean each and every Borough road, street and highway.

1.2 **Permission Required.** Pursuant to the provisions of Title 48 of the Revised Statutes of New Jersey, every company approved by the New Jersey Board of Public Utilities desiring permission to use Borough streets for its telecommunications facilities shall make application to the Borough Clerk. The Borough Council may grant such permission by resolution, subject to the terms, restrictions and limitations of this ordinance.

1.3 **Nature and Extent of Permission.** Every company which has received permission may, within the terms, restrictions and limitations of this section, erect, construct, reconstruct, remove, locate, relocate, replace, inspect, maintain, repair and operate its telecommunications facilities in, through, upon, along, over, under and across the entire length of Borough streets, and to effect the necessary street openings and lateral connections to curb poles, property lines and other facilities for the company’s local and through lines and other communications facilities.

1.4 **Effective Date and Expiration of Permission.** The permission granted to each company shall be effective and shall expire as provided in the resolution granting permission. Every company receiving permission may seek such changes as it may deem necessary and reasonable from time to time prior to expiration.

1.5 **Applicability.** Permission to the company shall apply to the company and its successors or assigns.

1.6 **Location of Poles, Posts and Facilities to be Erected.** All poles, posts, pedestals, cabinets and other facilities shall be located and placed behind the curblines where shown on the official map of the Borough; provided, however, that poles and posts shall be located within eighteen (18) inches of the fact of such curblines, as may otherwise be agreed upon by the company and the Borough Engineer or at the points or places already occupied by the poles, posts, pedestals, cabinets or other facilities of the company at the time it received permission.

### **1.7 Cables, Underground Conduits, Manholes and Equipment.**

a. The company may bury its telecommunications facilities within the right-of-way of streets at such locations as may be agreed upon by the company and the Borough Engineer.

b. Underground facilities shall be placed below the surface of streets and, with the exception of lateral branches to curb poles and property lines and other facilities, shall generally be constructed not more than ten (10) feet from the curblines unless obstructions make it necessary to deviate from such course or unless another location is authorized by the Borough Engineer. Underground facilities shall be placed at least eighteen (18) inches below the surface.

c. Manholes shall be located at such points along underground telecommunications facilities as may be necessary or convenient for placing, maintaining and operating the company's facilities and shall be constructed to conform to the cross-sectional and longitudinal grade of the surface so as not to interfere with the safety or convenience of persons or vehicles.

d. In subdivisions where utilities are installed underground, the company shall install all of its telecommunications facilities at or below grade, except that lots in such subdivision which abut streets with above ground utilities may be supplied with telephone service from existing overhead lines or extensions thereof if the service connections from the overhead lines shall be installed underground.

**1.8. Prior Notice of New Construction and Relocation Work Required.** Before proceeding with any new construction, the company shall give prior written notice to the Borough Engineer, including therewith a map or plan showing the location and extent of such work. Such maps or plans are for information of the Borough only and shall not be considered as construction specifications upon which the Borough or any third party may rely for subsequent excavation or other work.

**1.9 Street Opening and Excavation.** Prior to the opening or excavating of any street, the company shall obtain such street opening or excavation permits and pay such fees therefor as may be lawfully required, as provided by any ordinances regulating such openings or excavations. No building permits or zoning variances shall be required for the company's telecommunications facilities.

**1.10 Restoration.** Every street, and any pavement or other surface or planting, which is disturbed by the company in constructing its telecommunications facilities shall be restored to as good condition as it was before the commencement of work. Such restoration shall be subject to the approval of the Borough Engineer.

**1.11 Encumbrance of Streets.** No company shall encumber any street for a period longer than shall be necessary to execute its work.

**1.12 Curblines.** Whenever a curblines shall be established on streets where one does not now exist or where an established curblines shall be relocated in order to widen an existing street or highway in conjunction with road construction being performed by the Borough, the company shall change the location of its aboveground telecommunications facilities covered by this section so that the same shall be back of, and adjacent to, the new curblines so established, upon receipt of notice that the curblines has been so established, so long as the municipality has acted with reasonable care in establishing the new curblines and providing notice thereof.

**1.13 Joint Use of Company Poles and Structures.** Any company having legal authority to install telecommunications facilities in the Borough may jointly use the company's telecommunications facilities for all lawful purposes, provided the company consents to such use on terms and conditions acceptable to the company and not inconsistent with the provisions of this section.

**1.14 Indemnification by Company.** Each company shall indemnify and save harmless the Borough from and against all costs or expenses resulting from loss of life or property or injury or damage to the person or property of any person, firm or corporation caused by or arising out of conditions resulting from negligence or fault connected with the work or equipment of the company, when not attributable to the negligence or fault of the Borough; except that if such loss, injury or damage shall be caused by the joint or concurring negligence or fault of the company and the Borough, the same shall be borne by them to the extent of their respective degrees of negligence or fault.

**1.15 Exclusive Rights Not Granted.** Nothing in such section shall be construed to grant to any company an exclusive right, or to prevent the granting of permission to other companies for like purposes on the streets of the Borough.

**1.16 Advertising Expenses.** The company shall pay the expenses incurred for advertising required in connection with any ordinance to be adopted by the Borough of Manville affecting the company's use of Borough roads, streets and highways for telecommunications purposes within thirty (30) days after the company has received a bill for said advertising from the publisher.

**1.17 Vacation of Streets.** If any street where the company has telecommunications facilities is vacated by the Borough, the Borough shall reserve to the company the rights granted to the company by this section.

**1.18 Notice to be Given by Borough Clerk; Acceptance and Approval.** Following final passage of a resolution granting permission, the Borough Clerk shall provide the company with written notice thereof by certified mail. As provided by applicable law, permission shall not become effective until acceptance thereof by the company and approval thereof by the Board of Public Utilities.

## **SECTION II. Authorization and Execution of Right-of-Way Agreement.**

Authorization for a company to use Borough roads, streets and highways as set forth in this ordinance shall be subject to the execution of a Right-of-Way Agreement which shall be approved by Resolution adopted by the governing body, which resolution shall authorize the Mayor and Borough Clerk to execute the Right-of-Way Agreement in a form acceptable to the Borough and proper representatives of the company.

## **SECTION III. Inconsistency.**

Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

**SECTION IV. Severability.**

In the event that any provision of this ordinance, or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

**SECTION V. Purpose of Captions**

Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

**SECTION VI. Effective Date**

This ordinance shall take effect immediately upon final adoption and publication in accordance with the laws of the State of New Jersey.

Borough of Manville,

Angelo Corradino, Mayor

ATTEST:

Philip E. Petrone, Borough Clerk

**ORDINANCE #2013-1137**

**FIRST READING:**

Introduced	Seconded	Council	Yes	No	Abstain	Absent
√		<b>ASHER</b>	√			
		<b>GREGOR</b>	√			
		<b>PETZINGER</b>				√
		<b>SKIRKANISH</b>	√			
	√	<b>SZABO</b>	√			
		<b>KOMOROSKI</b>	√			
		<b>MAYOR CORRADINO</b>				

**PASSED** this 23<sup>rd</sup> day of September, 2013

*Philip E. Petrone*

Attest:

Philip E. Petrone, Borough Clerk

**SECOND READING:**

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		<b>ASHER</b>				
		<b>GREGOR</b>				
		<b>PETZINGER</b>				
		<b>SKIRKANISH</b>				
		<b>SZABO</b>				
		<b>KOMOROSKI</b>				
		<b>MAYOR CORRADINO</b>				

**[PASSED] [DEFEATED]** this \_\_\_\_\_ day of \_\_\_\_\_, 2013

Attest:

\_\_\_\_\_  
Philip E. Petrone, Clerk

