

ORDINANCE NO. 2017-24

**ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY
AMENDING CHAPTER 352: "FIBER OPTIC CABLES" TO COMPLY WITH THE PROVISIONS OF N.J.S.A.
54:30A-124**

Councilwoman Schwabenbauer offered the following ordinance and moved its adoption on final reading:

WHEREAS, the Borough of Red Bank receives requests from various business entities engaged in fiber optic and other cable communications industries seeking the Borough's approval for the use of right-of-way, streets, other municipally owned property; and

WHEREAS, requests of the kind described can involve substantial review by the Borough Engineer and Borough Attorney before approvals can be granted, often involve the excavation of streets, the provision of additional police services during installation with the concomitant disruption of traffic and public inconvenience and also involve additional time and expense for inspection and expense arising out of potential liability; and

WHEREAS, on or about August 14, 2013, the Governing Body of the Borough of Red Bank passed and adopted Ordinance No. 2013-17 governing the installation of fiber optic communications cables within the Borough of Red Bank, which Ordinance included certain recurring fees, together with fees calculated per linear foot of proposed cable installation; and

WHEREAS, in the intervening years since the adoption of Ordinance No. 2013-17 and as applications were received, it has become clear that certain recurring fees, per linear foot charges, and other similar quasi-tax provisions of the Ordinance are unenforceable pursuant to N.J.S.A. 54:30A-124; and

WHEREAS, the Borough remains committed to being supportive of emerging innovative technology that fiber optic and other cable offers to its users in compliance with New Jersey law, but not at the expense of burdening Borough taxpayers;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank, County of Monmouth, State of New Jersey, that Chapter 352: "Fiber Optic Cables" of the Borough's Revised General Ordinances is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

§ 352-1 Applicability of application process and license or permit fee schedule.

In order to implement the purposes of this chapter, the application process and license or permit fee schedule provided hereafter shall apply.

§ 352-2 Application requirements.

Every applicant for the installation of fiber optic or other cable or for the use of a public utility easement shall submit to the Borough Engineer:

- A. A plat showing the proposed location of the fiber optic or proposed installation;
- B. A depiction indicating whether the proposed installation is overhead or underground;
- C. Copies of all easements proposed to be used which have previously been granted to utilities; and
- D. All consents for the use of any such easements by the applicable utilities.

§ 352-3 Requirements of applications recommended for approval.

Every application recommended for approval by the Borough Engineer, if approved by the Mayor and

Council, will require as a condition thereof the following:

- A. Payment of a permit fee in accordance with the following schedule:
 - ~~(1) Above ground installation: \$0.50 per lineal foot.~~
 - ~~(2) Underground installation: \$0.75 per lineal foot per year, provided that, if the installation is located under publicly owned property (not a right of way), the fee shall be \$1.75 per lineal foot per year.~~
 - ~~(3) In no event shall the fee be less than \$500.~~
 - ~~(4)(1) An engineering and legal professional escrow for review of at least \$750-\$3,000, or more, as determined by the Borough Administrator in consultation with the Borough Engineer. Any additional escrow to be paid will be determined, in part, based upon the number of easements on each particular road where the installation will be installed, and each road shall be considered a new application.~~
 - (2) A one-time permit fee of \$2,500.00 payable to the Finance Department.
- ~~B. An annual renewal fee payable to the Finance Department on July 1 of each subsequent fiscal year of \$0.019/linear foot, with a minimum of \$500.~~
- ~~C.B.~~ A certificate of insurance naming the Borough as an additional insured for general liability coverage in the amount of at least \$2,000,000.
- ~~D.C.~~ An indemnification agreement, properly executed by the applicant, which shall hold the Borough, its officers, agents and employees harmless from any loss, claim or damage arising out of the installation, maintenance or use of the fiber optic cable installed by the applicant, the form of said agreement to be approved by the Borough Attorney.
- ~~E.D.~~ An agreement that the easement holder will permit the Borough to use the holder's easement without consideration for the installation of fiber optic or other cable for Borough operations, provided that said installation will not interfere with any fiber optic or other cable the easement holders may have previously installed in the easement area.
- ~~F. An agreement that the applicant will provide a minimum of six pairs of strands in each fiber optic cable (i.e., if a cable contains 48 strands and two cables are run, the Borough will have the use of 12 pairs of strands, six pair per cable) to the Borough for its use, and the use of any other governmental and quasi governmental entities approved by the Borough.~~

§ 352-4 License or permit period.

No license or permit issued hereunder shall be valid for a period of more than the lesser of ~~10~~25 years or, if applicable, the balance of the term of an easement previously granted to a utility pursuant to Title 48 of the New Jersey Statutes.

§ 352-5 Relocation of cable interfering with planned municipal installation.

In the event that the fiber optic or other cable installation interferes with a planned municipal installation, the subject fiber optic or other cable shall be relocated by its owner in an expeditious manner within the right-of-way to a location approved by the Borough at no cost to the Borough. The owner of the fiber optic or other cable shall not pay any additional fee to the Borough due to the relocation.

§ 352-6 Exceptions.

These procedures shall not be applicable to existing easements previously granted to New Jersey Natural Gas, Jersey Central Power & Light, Verizon or to any other entity, or to existing easements previously granted to or obtained by the present or future holder of a cable television franchise granted by the Borough of Red Bank.

§ 352-7 Street opening requirements.

Any underground installation of fiber optic cable, where applicable, shall be required to

comply with the street opening requirements set forth in Chapter XIX, Streets, Sidewalks & Sanitation, Section 19-1, of the Borough’s Ordinances to the satisfaction of the satisfaction of the Director of Public Utilities.

BE IT FURTHER ORDAINED that a copy of this Ordinance, upon introduction, shall be provided to all appropriate municipal agencies for their review and comment pursuant to applicable New Jersey Statutes.

BE IT FURTHER ORDAINED that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

BE IT FURTHER ORDAINED that, if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon its passage and adoption according to law.

Seconded by Councilman Yngstrom and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilman Yngstrom	(x)	()	()	()
Councilman Zipprich	(x)	()	()	()
Councilwoman Horgan	(x)	()	()	()
Councilwoman Schwabenbauer	(x)	()	()	()
Councilman Taylor	(x)	()	()	()
Councilman Whelan	(x)	()	()	()

Dated: July 12, 2017