



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## **ORDINANCE 0-19-10**

### **AN ORDINANCE CREATING LICENSING PROVISIONS FOR TELECOMMUNICATIONS FACILITIES IN THE RIGHTS OF WAY**

**WHEREAS**, the Federal Communications Commission has issued its Third Report and Order requiring approval of Small Wireless Facilities in the rights of way in certain circumstances; and

**WHEREAS**, the Federal Communications Commission recognizes local government authority to regulate such facilities; and.

**WHEREAS**, the Borough of Highlands wishes to establish clear local guidelines, standards and time frames for the exercise of local authority with respect to regulation of telecommunications providers and services to the extent permitted by the Federal Communications Commission.

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Highlands that Section 4-16 of the General Ordinances of the Borough of Highlands is hereby created as follows:

#### **SECTION I.**

#### **4-16 Licensing of Telecommunications Facilities.**

##### **4-16.1 Definitions.**

For the purpose of this chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

**AFFILIATE** - A person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

**BOROUGH** - The Borough of Highlands.

**EXCESS CAPACITY** - The volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

OTHER WAYS - The highways, streets, alleys, utility easements or other rights-of-way within the Borough but under the jurisdiction and control of a governmental entity other than the Borough.

OVERHEAD FACILITIES - Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

PERSON - Includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

PUBLIC STREET - Any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the Borough which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

PUBLIC WAY - Includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the Borough, but only to the extent of the Borough's right, title, interest or authority to grant a license to occupy and use such streets and easements for telecommunications facilities.

SMALL WIRELESS FACILITIES - Consistent with 47 C.F.R. § 1.6002(I), Small Wireless Facilities are facilities that meet the following conditions:

(1) The facilities -

- i. Are mounted on structures 50 feet or less in height including their antennas; or
- ii. Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- iii. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

- (4) The facilities do not require antenna structure registration under 47 C.F.R. Part 17; and
- (5) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

STATE - The State of New Jersey.

SURPLUS SPACE - That portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Board of Public Utilities, to allow its use by a telecommunications carrier for a pole attachment.

TELECOMMUNICATIONS CARRIER - Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, or property within the Borough, used or to be used for the purpose of offering telecommunications service.

TELECOMMUNICATIONS FACILITIES - The plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antenna, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

TELECOMMUNICATIONS PROVIDER - Includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities.

TELECOMMUNICATIONS SERVICE - The providing or offering for rent, sale or lease, or an exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

BOROUGH PROPERTY - Includes all real property owned by the Borough, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the Borough, which are not subject to the right-of-way licensing as provided in this chapter.

TREE - Any perennial plant having a diameter of four inches or greater measured at a point four feet above the ground.

UNDERGROUND FACILITIES - Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundation or supports for overhead facilities.

USABLE SPACE - The total distance between the top of the utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Board of Public Utilities (BPU).

UTILITY EASEMENT - Any easement owned by the Borough and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

UTILITY FACILITIES - The plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the Borough and used or to be used for the purpose of providing utility or telecommunications services.

#### **4-16.2 Telecommunications license required.**

Except as otherwise provided therein, any telecommunications carriers who desire to construct, install, operate, maintain, or otherwise locate Small Wireless Facilities in, under, over or across any public way of the Borough for the sole purpose of providing telecommunications service to persons in areas outside the Borough shall first obtain a license granting the use of such public ways from the Borough pursuant to this chapter. Any telecommunications carriers who desire to construct, install, operate, maintain, or otherwise locate Telecommunications Facilities other than Small Wireless Facilities in, under, over or across any public way of the Borough must also obtain a license granting the use of such public ways from the Borough; such applicants must submit the application information set forth in section 4-16.6, and consideration and approval of such applications shall be at the sole discretion of the Borough Council.

#### **4-16.3 Violations and penalties.**

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be punishable as provided in Chapter 1,

Section 5, Penalties; General. A separate and distinctive offense shall be deemed committed each day on which a violation occurs or continues.

#### **4-16.4 Other remedies.**

Nothing in this chapter shall be construed as limiting any judicial remedies that the Borough may have, at law or in equity, for enforcement of this chapter.

#### **4-16.5 Agreement.**

No license granted hereunder shall be effective until the applicant and the Borough have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use public ways of the Borough will be granted.

#### **4-16.6 Small Wireless Facilities license application information.**

Any person that desires a telecommunications license for a Small Wireless Facility pursuant to this chapter shall file an application with the Borough which shall include the following information:

- a. The identity of the license applicant, including all affiliates of the applicant.
- b. A description of the telecommunications services that are or will be offered or provided by licensee over its telecommunications facilities.
- c. A description of the transmission medium that will be used by the licensee to offer or provide such telecommunications services.
- d. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Borough, all in sufficient detail to identify:
  1. The location requested for applicant's proposed Small Wireless Facilities.
  2. A description of the type and height of the structure on which the Small Wireless Facilities are being mounted, and a description of the proximity of the equipment to any other equipment on the same structure.
  3. The size and weight of the proposed equipment.
  4. A description of any proposed lighting, and if any, proposed focusing/shielding to avoid projection towards adjacent/nearby properties.
  5. A description of the noise output of the proposed Small Wireless Facility in decibels
  6. A description of any proposed excavation.
  7. Radiofrequency radiation levels of the proposed equipment. This must include a certification of a professional engineer licensed in New Jersey that said levels do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).
  8. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way at the proposed site.
  9. The location(s), if any, for interconnection with the telecommunications facilities of other communications carriers.
  10. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or

- relocate, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction
- e. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
    - 1. The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities.
    - 2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
  - f. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
    - 1. The location proposed for the new ducts or conduits.
    - 2. The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
  - g. If applicant is proposing construction of facilities above ground, but below a height of 15 feet, applicant shall submit a survey with a minimum 50-foot radius that is adequate to demonstrate no negative impacts to sight distance or sight triangle. Such survey shall be submitted in NAVD88 datum.
  - h. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways
  - i. A preliminary construction schedule and completion date.
  - j. A preliminary traffic control plan in accordance with the New Jersey Department of Transportation regulations.
  - k. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
  - l. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
  - m. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.
  - n. All fees, deposits or charges required pursuant to this Chapter.

#### **4-16.7 Small Wireless Facilities fees.**

- a. Applicants seeking to install up to five Small Wireless Facilities shall pay an initial application fee of \$500. An additional \$100 shall be required for each Small Wireless Facility beyond five.
- b. An annual fee of \$270 per Small Wireless Facility per year for access to and inspection of such facilities shall be required.

#### **4-16.8 Review of Small Wireless Facilities applications.**

Applicants seeking to install Small Wireless Facilities within the Borough, including within the public right-of-way, shall submit an application to the Borough. Small Wireless Facilities applications shall be reviewed by the Borough Council pursuant to the following:

- a. The Borough Council shall review applications to collocate Small Wireless Facilities on existing structures within 60 days of receipt of the application, and applications for new construction of Small Wireless Facilities within 90 days. "Batch" applications seeking both to collocate and to construct new Small Wireless Facilities shall be reviewed within 90 days.
- b. The time period for review shall be tolled during any period in which the applicant is notified that it has not submitted a complete application.
- c. Complete applications that comply with the standards set forth in Section 4-16.19 shall be granted within the applicable time period.

**4-16.9 Nonexclusive grant.**

No license granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Borough for delivery of telecommunications services or any other purposes.

**4-16.10 Rights granted.**

No license granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

**4-16.11 Term of grant.**

Unless otherwise specified in a license agreement, a telecommunications license granted hereunder shall be in effect for a term of five years.

**4-16.12 License route.**

A Small Wireless Facilities license granted under this chapter shall be limited to a grant of specific public ways and defined portions thereof.

**4-16.13 Construction permits.**

All licensees are required to obtain construction permits for Small Wireless Facilities; provided, however, that nothing in this chapter shall prohibit the Borough and a licensee from agreeing to alternative plan review, permit and construction procedures, provided such alternative procedures provided substantially equivalent safeguards for reasonable construction practices and are not in derogation of any applicable provisions of the Uniform Construction Code.

**4-16.14 Amendment of grant.**

- a. A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its Small Wireless Facilities in public ways of the Borough which are not included in a license previously granted under this chapter.
- b. If ordered by the Borough to locate or relocate its Small Wireless Facilities in public ways not included in a previously granted license, the Borough shall grant a license amendment without further application.

#### **4-16.15 Renewal applications.**

A licensee that desires to renew its license under this chapter shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the Borough for renewal of its license which shall include the following information:

- a. The information required pursuant to section 4-16.6 of this chapter.
- b. Any information required pursuant to the license agreement between the Borough and the grantee.
- c. Such additional reasonable and relevant information as may be determined by the Borough Council as essential for acting upon the renewal application.

#### **4-16.16 Renewal determinations.**

Within 90 days after receiving a complete application under section 4-16.15 hereof, the Borough shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

- a. The financial and technical ability of the applicant.
- b. The legal ability of the applicant.
- c. The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- d. The applicant's compliance with the requirements of this chapter and the license agreement.
- e. Applicable federal, state and local telecommunications laws, rules and policies.
- f. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

#### **4-16.17 Obligation to cure as a condition of renewal.**

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Borough.

#### **4-16.18 Regulatory fees and compensation not a tax.**

The regulatory fees and costs provided for in this chapter are separate from, and additional to, any and all federal, state, local and Borough taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

#### **4-16.19 Small Wireless Facilities standards.**

- a. Small Wireless Facilities shall be collocated on existing structures when possible. Collocation of Small Wireless Facilities is preferred to construction of new

structures intended to solely support a Small Wireless Facility, unless the new structure is designed to conceal the Small Wireless Facility.

- b. Absent a showing of necessity, the following shall apply:
  1. There shall be no more than one Small Wireless Facility located on any single structure.
  2. Small Wireless Facilities shall not be located within 200 feet of any existing Small Wireless Facilities.
- c. No new Small Wireless Facilities shall be located within five (5) feet of a private driveway or in a manner that would otherwise obstruct visibility from a private driveway to the public right of way.
- d. Any required accessory equipment, not including the antenna, shall be located underground to the extent possible. Accessory equipment that cannot be located underground must be located on the structure. No accessory equipment may be located on the ground adjacent to the structure. Antennas and associated equipment for Small Wireless Facilities located in a flood zone shall be mounted on the supporting structure at or above the FEMA Base Flood Elevation plus any Federal, state or Local freeboard requirement or shall be located in a floodproof underground cabinet.
- e. Any disturbance to the public right of way as a result of the construction of the Small Wireless Facilities shall be restored to its original condition post construction to the satisfaction of the Borough Engineer

#### **4-16.20 Compliance with other regulations.**

All license or franchise grantees shall, before commencing any construction in the public ways, comply with all regulations of the BPU and of the applicable state, federal and local regulations.

#### **4-16.21 Interference with public ways prohibited.**

No licensee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the Borough, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the licensee, temporarily or permanently, as determined by the Borough Engineer.

#### **4-16.22 Damage to property.**

No licensee nor any person acting on a licensee's behalf shall take any action or permit any action to be done which may impair or damage any Borough property, public ways of the Borough, other ways or other property located in, on or adjacent thereto.

#### **4-16.23 Notice of works.**

Unless otherwise provided in a license agreement, no licensee nor any person acting on the licensee's behalf shall commence any nonemergency work in or about the public ways of the Borough or other ways within 10 working days advanced notice to the Borough.

#### **4-16.24 Repair and emergency work.**

In the event of an unexpected repair or emergency, a licensee may commence such repair and emergency response work as required under the circumstances, provided that the licensee shall notify the Borough as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advanced notice is not practicable.

#### **4-16.25 Maintenance of facilities.**

Each licensee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

#### **4-16.26 Relocation or removal of facilities.**

Within 30 days following written notice from the Borough, a licensee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the Borough shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- a. The construction, repair, maintenance or installation of any Borough or other public improvement in or upon the public ways.
- b. The operations of the Borough or other governmental entity in or upon the public ways.

#### **4-16.27 Removal of unauthorized facilities.**

Within 30 days following written notice from the Borough, any licensee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways of the Borough shall, at its own expense, remove such facilities or appurtenances from the public ways of the Borough. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- a. Upon expiration or termination of the licensee's telecommunications license.
- b. Upon abandonment of a facility within the public ways of the Borough.
- c. If the system or facility was constructed or installed without the prior grant of a telecommunications license.
- d. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- e. If the system or facility was constructed or installed at a location not permitted by the licensee's telecommunications license.

#### **4-16.28 Emergency removal or relocation of facilities.**

The Borough retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the Borough, as the Borough may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

#### **4-16.29 Damage to licensee's facilities.**

Unless directly and proximately caused by the willful, intentional or malicious acts by the Borough, the Borough shall not be liable for any damage to or loss of any telecommunications facility within the public ways of the Borough as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the Borough.

#### **4-16.30 Restoration of public ways, other ways and Borough property.**

- a. When a licensee or any person acting on its behalf does any work in or affecting any public ways, other ways or Borough property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the Borough.
- b. If weather or other conditions do not permit the complete restoration required by this section, the licensee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the licensee's sole expense and the licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- c. A licensee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle property by reason of such work in or affecting such ways or property.

#### **4-16.31 Facilities maps.**

Each licensee shall provide the Borough with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. In addition, the licensee shall provide a computer aided design and drafting (CADD) file containing the facilities' mapping in the .dwg format. Each licensee shall provide updated maps annually.

#### **4-16.32 Duty to provide information.**

Within 10 days of a written request from the Borough Council or Borough Administrator, each licensee shall furnish the Borough with information sufficient to demonstrate:

- a. That licensee has complied with all requirements of this chapter.

- b. All books, records, maps and other documents, maintained by the licensee with respect to its facilities within the public ways shall be made available for inspection by the Borough at reasonable times and intervals.

#### **4-16.33 Licensee insurance.**

- a. Unless otherwise provided in a license agreement, each licensee shall, as a condition of the license, secure and maintain the following liability insurance policies insuring both the licensee and the Borough, and its elected and appointed officers, officials, agents and employees as coinsured.
  - 1. Comprehensive general liability insurance with limits not less than:
    - i. For bodily injury or death to each person: \$5,000,000.
    - ii. For property damage resulting from any one accident: \$5,000,000.
    - iii. For all other types of liability: \$5,000,000.
  - 2. Automobile liability for owned, nonowned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.
  - 3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
  - 4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.
- b. The liability insurance policies required by this section shall be maintained by the licensee throughout the term of the telecommunications license, and such other period of time during which the licensee is operating without a license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the Borough, by registered or certified mail, of a written notice, addressed to the Borough Clerk, of such intent to cancel or not to renew."
- c. Within 60 days after receipt by the Borough of said notice, and in no event later than 30 days prior to said cancellation, the licensee shall obtain and furnish to the Borough replacement insurance policies meeting the requirements of this section.

#### **4-16.34 General indemnification.**

Each license agreement shall include, to the extent permitted by law, licensee's express undertaking to defend, indemnify and hold the Borough and its officers, employees, agents and representatives harmless from and against any and all damages, losses and

expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the licensee or its affiliates, officers, employees, agents, contractors or subcontracts in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a grant agreement made or entered into pursuant to this chapter.

#### **4-16.35 Construction and completion bond.**

Unless otherwise provided in a license agreement, a performance bond written by a corporate surety acceptable to the Borough equal to at least 100% of the estimated cost of constructing licensee's telecommunications facilities within the public ways of the Borough shall be deposited before construction is commenced.

- a. The construction bond shall remain in force until released by the Borough. Licensee may apply, in writing, for such release upon the lapse of at least 60 days after substantial completion of the work, as determined by the Borough Engineer, including restoration of public ways and other property affected by the construction. The Borough Engineer shall, within 45 days of receipt of the licensee's written request for release, file a written recommendation with the governing body concerning the release. The Borough Council shall take formal action on the request for release within 45 days of the filing of the Borough Engineer's recommendation.
- b. The construction bond shall guarantee, to the satisfaction of the Borough:
  1. Timely completion of construction;
  2. Construction in compliance with applicable plans, permits, technical codes and standards;
  3. Proper location of the facilities as specified by the Borough;
  4. Restoration of the public ways and other property affected by the construction;
  5. The submission of as-built drawings, as well as a computer aided design and drafting (CADD) files containing the drawings in the .dwg format, after completion of the work as required by this chapter; and
  6. Timely payment and satisfaction of all payments then due to the Borough, all claims, demands or liens for labor, material or services provided in connection with the work.

#### **4-16.36 Coordination of construction activities.**

All licensees are required to cooperate with the Borough and with each other.

- a. By February 1 of each year, licensees shall provide the Borough with a schedule of their proposed construction activities in, around or that may affect the public ways.
- b. Each licensee shall meet with the Borough, other licensees and users of the public ways annually or as determined by the Borough to schedule and coordinate construction in the public ways.
- c. All construction locations, activities and schedules shall be coordinated, as ordered by the Borough Engineer, to minimize public inconvenience, disruption or damages.

#### **4-16.37 Assignments or transfers of license.**

Ownership or control of a telecommunications system or license may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the licensee, by operation of law or otherwise, without the prior consent of the Borough, which consent shall not be unreasonably withheld or delayed, as expressed by formal act and then only on such reasonable conditions as may be prescribed therein.

- a. No license shall be assigned or transferred in any manner within 12 months after the initial grant of the license, unless otherwise provided in a license agreement.
- b. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.
- c. Licensee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the Borough not less than 150 days prior to the proposed date of transfer:
  - 1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment;
  - 2. All information required of a telecommunications license applicant pursuant to this chapter with respect to the proposed transferee or assignee;
  - 3. Any other information reasonably required by the Borough.
- d. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this chapter.
- e. Unless otherwise provided in a license agreement, the grantee shall reimburse the Borough for all direct and indirect fees, costs, and expenses reasonably incurred by the Borough in considering a request to transfer or assign a telecommunications license.
- f. Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the Borough under this section or

pursuant to a license agreement shall be void and is cause for revocation of the license.

#### **4-16.38 Transactions affecting control of grant.**

Any transactions which singularly or collectively result in a change of 10% or more of the ownership or working control of the licensee, of the ownership or working control of a telecommunications license or the ownership or working control of affiliated entities having ownership or working control of the licensee or of a telecommunications system, or of control of the capacity or bandwidth of licensee's telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring Borough approval pursuant to section 4-16.37 hereof. Transactions between affiliated entities are not exempt from Borough approval.

#### **4-16.39 Revocation or termination of license.**

A license granted by the Borough to use or occupy public ways of the Borough may be revoked for the following reasons:

- a. Construction or operation in the Borough or in the public ways of the Borough contrary to a license grant.
- b. Construction or operation at an unauthorized location.
- c. Unauthorized substantial transfer of control of the licensee.
- d. Unauthorized assignment of a license.
- e. Unauthorized sale, assignment or transfer of licensee's assets, or a substantial interest therein.
- f. Misrepresentation or lack of candor by or on behalf of a licensee in any application to the Borough.
- g. Abandonment of telecommunications facilities in the public ways.
- h. Failure to relocate or remove facilities as required in this chapter.
- i. Failure to pay fees and costs when and as due the Borough.
- j. Insolvency or bankruptcy of the licensee.
- k. Violation of material provisions of this chapter.
- l. Violation of the material terms of a license agreement.

#### **4-16.40 Notice and duty to cure.**

In the event that the Borough Council believes that grounds exist for revocation of a license, it shall give the licensee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the licensee a reasonable period of time not exceeding 30 days to furnish evidence:

- a. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- b. That rebuts the alleged violation or noncompliance.
- c. That it would be in the public interest to impose some penalty or sanction less than revocation.

#### **4-16.41 Hearing.**

In the event that a licensee fails to provide evidence reasonably satisfactory to the Borough Council as provided in section 4-16.40 hereof, the Council shall provide the licensee with notice and a reasonable opportunity to be heard concerning the matter.

#### **4-16.42 Standards for revocation or lesser sanctions.**

If persuaded that the licensee has violated or failed to comply with material provisions of this chapter, or of a license agreement, the Council shall determine whether to revoke the license or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- a. Whether the misconduct was egregious.
- b. Whether substantial harm resulted.
- c. Whether the violation was intentional.
- d. Whether there is a history of prior violations of the same or other requirements.
- e. Whether there is a history of overall compliance.
- f. Whether the violation was voluntarily disclosed, admitted or cured.

#### **4-16.43 General.**

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the Borough except as provided in this chapter.

#### **4-16.44 Construction codes.**

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state, and local codes, rules and regulations including the Electrical Code currently in effect.

#### **4-16.45 Construction permits.**

No person shall construct or install any telecommunications facilities within the Borough without first obtaining a license therefor; provided, however, that no license shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a license pursuant to this chapter.

#### **4-16.46 Engineer's certification.**

All license applications shall be accompanied by the certification of a professional engineer licensed in New Jersey that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

#### **4-16.47 Traffic control plan.**

All license applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the New Jersey Department of Transportation regulations, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The plan will be submitted to the Highlands Borough Chief of Police for review and approval. The Borough may require the applicant to hire traffic directors (off-duty police officers) on an as-needed basis.

#### **4-16.48 Construction schedule.**

The licensee shall submit a written construction schedule to the Borough Engineer 10 working days before commencing any work in or about the public ways. The licensee shall further notify the Borough Engineer not less than two working days in advance of any excavation or work in the public ways.

#### **4-16.49 Display of license.**

The licensee shall maintain a copy of the license and approved plans at the construction site, which shall be displayed and made available for inspection by the Borough Engineer or his representatives at all times when construction work is occurring.

#### **4-16.50 Survey of underground facilities.**

If the license specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the licensee shall cause the location of such facilities to be verified by a licensed New Jersey land surveyor. The licensee shall relocate any facilities which are not located in compliance with license requirements.

#### **4-16.51 Noncomplying work.**

Upon order of the Borough Engineer, all work which does not comply with the license, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed.

#### **4-16.52 Completion of construction.**

The licensee shall promptly complete all construction activities so as to minimize disruption of the Borough ways and other public and private property. All construction work authorized by a license within Borough ways, including restoration, must be completed within 120 days of the date of issuance.

**4-16.53 As-built drawings.**

Within 60 days after completion of construction, the licensee shall furnish the Borough with two complete sets of plans, drawn to scale and certified to the Borough as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. This information shall be provided through computer aided design and drafting (CADD) files in a .dwg file format.

**4-16.54 Restoration of improvements.**

Upon completion of any construction work, the licensee shall promptly repair any and all public and provide property improvements, fixtures, structures and facilities in the public ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

**4-16.55 Landscape restoration.**

- a. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunications facilities replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.
- b. All restoration work within the public ways shall be done in accordance with landscape plans approved by the Borough Engineer.

**4-16.56 Exceptions.**

Unless otherwise provided in a license agreement, all telecommunications carriers are subject to the requirements of this Chapter.

**4-16.57 Responsibility of owner.**

The owner of the facilities to be constructed and, if different, the licensee, are responsible for performance of and compliance with all provisions of this chapter.

**SECTION II. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

**SECTION III. REPEALER.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION IV. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage and publication in accordance with law.

**Motion to Introduce Ordinance 19-10:**

	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BRASWELL			X			
BROULLON		X	X			
MAZZOLA			X			
RYAN	X		X			
O'NEIL			X			

I, Bonnie Brookes, Municipal Clerk of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body, at its Council Meeting, held April 17, 2019. WITNESS my hand this 18th day of April 2019.



Bonnie Brookes, RMC  
Municipal Clerk

**Motion to Adopt Ordinance 19-10:**

	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BRASWELL			X			
BROULLON		X	X			
MAZZOLA			X			
RYAN	X		X			
O'NEIL			X			

I, Bonnie Brookes, Municipal Clerk of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body, at its Council Meeting, held May 1, 2019. WITNESS my hand this 1<sup>st</sup> day of May 2019.



Bonnie Brookes, RMC  
Municipal Clerk