

**ORDINANCE NO. 2017-9**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER,  
SALEM COUNTY, STATE OF NEW JERSEY, REGULATING THE STATUTORY  
AUTHORITY OF VERIZON NEW JERSEY INC., ITS SUCCESSORS AND ASSIGNS  
AS TO THE NON-EXCLUSIVE USE OF THE VARIOUS PUBLIC STREETS, ROADS,  
AVENUES, HIGHWAYS AND OTHER PUBLIC WAYS IN THE BOROUGH OF ELMER,  
SALEM COUNTY, NEW JERSEY**

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**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Elmer, County of Salem and State of New Jersey, and it is hereby enacted and ordained by the authority of same as follows:

**Section 1.**

Pursuant to the provisions of N.J.S.A. 48:17-10, N.J.S.A. 48:17-11, and N.J.S.A. 48:17-12, non-exclusive permission and consent is hereby granted to Verizon New Jersey Inc., (the "Company"), its successors and assigns, to install, operate, inspect, maintain, repair, replace and remove its communications facilities and other transmission or process equipment, including underground facilities, such as conduits, manholes, cables, wires, and all other facilities appurtenant thereto, and above-ground facilities, such as cables, wires, antennas, poles, posts, supports, guys, pedestals, cable termination and distribution cabinets and all other facilities appurtenant thereto, in, through, upon, along, over, under, and across all of the various public streets and ways, which include the roads, avenues, right-of-way, sidewalks, highways, bridges, waterways, and other public places, and parts thereof, throughout their entire length, and to effect the necessary street openings and lateral connections to curb poles, property lines and other facilities in the Borough of Elmer, Salem County for said Company's local and through lines and other communications facilities in connection with the transaction of its business. In the event that any public street or way where the Company has facilities is vacated by the Borough, the Borough agrees to reserve unto said Company the rights granted the Company by the present Ordinance.

**Section 2.**

All poles, posts, pedestals, cabinets, or other facilities shall be located and placed back of the curb lines where shown on the official map(s) of the Borough the poles and posts, however, shall be located within eighteen (18) inches of the face of such curb line or as may otherwise be mutually agreed by both parties or required by law, or at the points or places now occupied by the poles, posts, pedestals, cabinets, or other facilities of the Company, its successors and assigns, and where there are no curb lines, at other convenient points or places in, upon, along, adjacent, or across the public streets and ways as may be mutually agreed upon between the parties.

### **Section 3.**

The Company may bury its local and through communications facilities such as cables, conduit, manholes and associated equipment, fixtures, process equipment and appurtenances within the right-of-way of the various public streets and ways and at such locations as shall be mutually agreed upon by the parties for said Company's local and through lines and communications facilities. Underground conduits and associated facilities, as aforementioned, shall be placed at least eighteen (18) inches below the surface of said public streets and ways and with the exception of lateral branches to curb poles and property lines and other facilities, the same shall generally not be constructed more than ten (10) feet from the curb line, unless obstructions make it necessary to deviate from such course or unless the parties mutually agree to another location. Manholes shall be located at such points along the line of underground conduits as may be necessary or convenient for placing, maintaining, and operating the facilities, as aforementioned, which the Company may from time to time use in connection with its underground conduit system and shall be so constructed as 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.

### **Section 4.**

Before proceeding with any new construction or relocation work in an area covered by this Ordinance, the Company shall give prior notice in writing thereof to the Borough, through its designated representative, of its intention to perform such work. The Company shall obtain such street opening or excavation permits as may be lawfully required by any applicable ordinances regulating such openings or excavations. Any such area affected by the Company in constructing its facilities shall be restored to as good condition as it was before the commencement of work thereon. No public streets or ways shall be encumbered for a period longer than shall be reasonable to execute the work.

### **Section 5.**

The Company agrees to indemnify and save harmless the Borough from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of road conditions resulting from any negligent or faulty excavations, installation or maintenance connected with the work or equipment of said Company, and not attributable to the fault or negligence of the Borough, except that if such 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 fault or negligence.

### **Section 6.**

Whenever a curb line shall be established on streets where one does not now exist or where an established curb line shall be relocated in order to widen an existing street in conjunction with road construction being performed by the Borough the Company shall change the location of its above-ground facilities covered by this Ordinance in accordance with applicable law, so that the same shall be back of, and adjacent to, the new curb line so long as the Borough has acted in accordance with applicable law and with reasonable care in establishing the new curb line and providing notice thereof.

### **Section 7.**

Any company or corporation having legal authority to place its facilities in the public streets and ways of the Borough may jointly use the Company's poles, posts, pedestals or other structures 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 the present Ordinance.

### **Section 8.**

The Company shall provide space, to the extent available, on its poles so long as said poles are occupied by the Company and space, to the extent available, in its main conduits existing on the date of passage of this Ordinance, but not exceeding one (1) duct of standard size, for the sole benefit of the Borough during the pendency of this Ordinance. Such space shall be provided for the exclusive use of the Borough which use shall be limited to accommodating the wires or electrical conductors required for one-way signal control in connection with municipal police patrol, fire alarm signal control and traffic signal control systems only; but for no other uses or purposes, either alone or in conjunction therewith; nor for circuits for the supply of electrical energy for traffic or other signals; nor for wires, conductors, cable or the equivalent which provide a means of transmitting any signal to a private, commercial or residential location, and which is normally provided by a nongovernmental supplier; provided, further, that no such use or attachment by the Borough shall interfere with the plant or facilities of or the use thereof by the Company. All costs or expenses incurred by the Company in connection therewith shall be paid by the Borough. It shall be the obligation of the Borough to attach its wires to the poles or place its electric conductors in the conduits or manholes of the Company, provided that before proceeding with said work, either by itself or by a person, firm or corporation engaged to perform such work, the Borough shall give the Company thirty (30) days prior notice in writing. All such work shall be performed under the supervision of said Company. The Borough agrees to indemnify and save harmless the Company from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of the Borough's installation maintenance, operation or removal of wires or facilities or the Borough's use or enjoyment of the Company's plant or facilities as provided under this section, except that if such injury or damage shall be caused by joint or concurring negligence of the Company and Borough, the same shall be borne by them to the extent of their respective fault or negligence.

### **Section 9.**

If any or all of the said streets or ways are later taken over by the County of Salem or the State of New Jersey, such County or State shall have such rights and privileges and be subject to the same terms, conditions and limitations of use as apply herein to the Borough, provided, however, that satisfactory prior arrangements as may be necessary are made with the Borough and the Company for the full protection of the respective interest of each.

### **Section 10.**

The term "Borough" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Borough or any part thereof may at any time hereafter be changed, annexed, or merged.

### **Section 11.**

The non-exclusive permission and consent hereby granted shall apply to and cover all communications facilities of the Company existing at any time, and related structures, process equipment, and appurtenances heretofore or hereafter erected, constructed, reconstructed, removed, located, relocated, replaced, maintained, repaired, or operated by the Company, its predecessors, successors, or assigns within the Borough. This Ordinance shall cancel and supersede all prior consent ordinances between the Borough and the Company regarding the subject matter hereof.

### **Section 12.**

This Ordinance shall continue in full force and effect for a period of twenty (20) years from the date it becomes effective subject to the right of the Company to seek such changes herein as may be deemed necessary from time to time prior to the expiration of said period, said changes to be approved by the Borough. The Company shall maintain its property within the Borough and shall comply with applicable law for the provision of safe, adequate and proper service at just and reasonable rates. At and after the term of this Ordinance, the Company shall safeguard the public interest in continuous and uninterrupted service within the Borough.

### **Section 13.**

In the event that any provision herein shall for any reason be illegal or unenforceable under applicable law, such illegality or unenforceability shall not affect any other provisions of this Ordinance, and this Ordinance shall be construed as if such illegal or unenforceable provision(s) had never been contained herein.

### **Section 14.**

The Company shall pay the expenses incurred for advertising required in connection with the passage of this Ordinance, after the date of its first reading, within thirty (30) days after the Company has received a bill for said advertising from the publisher. Following final passage of this Ordinance, the Borough Clerk shall provide the Company with written notice thereof by certified mail. As provided by applicable law, this Ordinance, and any subsequent amendments, shall not become effective until acceptance thereof by the Company and approval thereof by the Board of Public Utilities.

### **Section 15.**

#### **Repealer.**

All prior Ordinances or parts of Ordinances inconsistent with this Ordinance be and the same are hereby repealed to the extent of such inconsistencies.

### **Section 16.**

#### **Severability.**

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**Section 17.**

**When effective.**

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

**BOROUGH OF ELMER**

**BY: \_\_\_\_\_  
Joseph Stemberger, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Sarah D. Walker  
Acting Borough Clerk**

**NOTICE**

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Elmer, in the County of Salem and State of New Jersey, held on April 12, 2017. It will be further considered for final passage, after public hearing hereon, at a meeting of said Mayor and Council to be held in the Borough Hall, 120 South Main Street, Elmer, New Jersey 08318, on May 10, 2017 at 7:30 P.M. During the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office at Borough Hall, 120 South Main Street, in the Borough, to the members of the general public who shall request the same.

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Sarah D. Walker  
Acting Borough Clerk

ROLL CALL VOTE as follows:

	<u>MOTION</u>	<u>SECOND</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Schneider	___	___	___	___	___	___
Davis	___	___	___	___	___	___
Nolan	___	___	___	___	___	___
Richards	___	___	___	___	___	___
Schalick	___	___	___	___	___	___
Zee	___	___	___	___	___	___