

ORDINANCE 2232-19

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE
BOROUGH OF HAWTHORNE CHAPTER 540, ZONING TO CREATE NEW
ARTICLE XXVI, DISTRIBUTIVE ANTENNAE SYSTEMS**

WHEREAS, the installation, expansion, maintenance, and aesthetics of wireless telecommunications towers, and facilities can have significant impacts upon adjacent properties, property values, and the public health, safety, and welfare of citizens in nearby properties; and

WHEREAS, the Federal Telecommunications Act authorizes municipalities to regulate the placement of wireless telecommunication towers and facilities through proper zoning procedures, so long as wireless service coverage is not prohibited; and

WHEREAS, the Federal Telecommunications Act permits local governments to provide for reasonable regulations over the location, height, and maintenance of telecommunications structures; and

WHEREAS, the Borough has adopted zoning regulations governing the placement of mobile cellular communications antennas and towers; and

WHEREAS, advances in wireless telecommunication facilities include a network of small wireless Distributive Antenna Systems (“DAS”); and

WHEREAS, the Borough finds that in order to ensure proper installation and operation of DAS facilities and preserve the structural soundness thereof, as well as preserve the safety and welfare of the citizens, compliance with regulations regarding and use of DAS facilities in the right-of-way is desired.

BE IT ORDAINED by the governing body of the Borough of Hawthorne that it does hereby amend and supplement the Zoning Ordinance of the Borough of Hawthorne as follows:

SECTION 1. Article II § 540-3 Definitions is hereby amended and supplemented with the following new terms:

COMMUNICATION ANTENNA – Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. A communications antenna shall not include mobile cellular communications antennas or mobile cellular communications towers as otherwise regulated under this Chapter.

DISTRIBUTIVE ANTENNA SYSTEMS (“DAS”) – A network of one or more antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS shall also include the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services. The term shall be construed to include supporting cables, wires, braces, masts or other appurtenances.

SECTION 2. Chapter 540 is hereby supplemented by adding new Article XXVI, Installation of Distributive Antenna Systems (“DAS”) Within the Public Right-of-way as follows:

§ 540-192 Installation of Distributive Antenna Systems (“DAS”) Within the Public Right-of-Way

- A. Communications antenna relating to a “DAS” system shall be permitted in areas in which all utilities are located aboveground regardless of the underlying zoning district, so long as such antenna are located on existing poles in the public right-of-way. Antenna shall not be located on any sign listed in the Manual on Uniform Traffic Control Devices (MUTCD) nor on any traffic signal pole, mast arm device or associated equipment.
- B. Communications antenna and support equipment shall be co-located on existing poles, such as existing utility poles or street light poles. New poles for communication antenna intended to solely support a “DAS” system are expressly prohibited unless otherwise approved by the governing body upon a showing that such installation is absolutely

necessary and can be accomplished in a manner that is consistent with the following standards:

- (1) Any new DAS pole and its accessory equipment shall be located so as to not cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right of way as determined by the Borough;
- (2) New DAS poles cannot be located within 1000 feet of another pole either on the same side or across the street from an existing pole used for a DAS system.
- (3) In no case shall a new DAS pole be located within thirty-six (36) inches of the exposed back of the curb or from the edge of pavement or within an easement extending onto privately owned land;
- (4) No new DAS pole 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.
- (5) Any required accessory equipment intended to support the DAS pole shall not be located on the ground but shall be placed within an underground vault or alternatively, be pole mounted. If pole mounted, screening requirements and height and extension from pole limitations cited herein for co-location shall govern.
- (6) Construction of a new pole shall comply with all applicable building and electrical code requirements and shall require a construction permit. Prior to the issuance of a construction permit, the Borough Engineer shall, at the applicant's cost, review and approve the construction drawings in conjunction with the Borough Construction Official.
- (7) Any disturbance to the public right of way as a result of the construction of a new pole shall be restored to its original condition post construction to the satisfaction of the Borough Engineer;
- (8) A DAS pole shall be maintained in good condition and repair by qualified maintenance and constructional personnel at the cost of the responsible party that operates the pole so that the pole shall not endanger the life of any person or any property in the Town.
- (9) Insurance by each owner or operator of a DAS pole shall provide to the Borough a certificate of insurance, in a form acceptable to the Borough Attorney, evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the new pole.

§ 540-193 Indemnification, Hold Harmless and Abandonment

- A. Each owner or operator of a DAS system or pole shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the DAS system or pole. Each person that owns or operates a DAS system or pole shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation maintenance or removal of a DAS system or pole. Such indemnification shall be provided to the Borough prior to the issuance of a construction permit in a form acceptable to the Borough Attorney.
- B. The removal and replacement of a DAS pole and/or its related equipment for the purposes of upgrading or repairing the pole is permitted, so long as such repair or upgrade does not

increase the overall size, height or design of the originally approved pole. Any modification shall require a new permit and authorization by the Borough.

- C. Should it be the intent of the owner or operator of a DAS pole to abandon the pole and discontinue its use, the owner or operator shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned DAS poles shall be removed as follows:
- (1) All unused or abandoned DAS poles and accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless otherwise extended by the Borough;
 - (2) If the DAS pole and all related facilities are not removed within six (6) months of the cessation of operations at the site, or within any longer period approved by the Borough, the DAS pole and all its related facilities may be removed by the Borough and the cost of removal assessed against the owner of the DAS pole;
 - (3) The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval as well as related inspection, monitoring and related costs.
 - (4) Prior to the approval of the construction permit for the new DAS pole, the owner or operator of the pole shall provide the Borough financial security sufficient to guarantee the removal of such pole in a form acceptable to the Borough Attorney. Said financial security shall remain in place until the DAS pole is removed.

§ 540-194 Construction and Maintenance

- A. In accordance with applicable law, the Borough reserves the right to deny an application for a new DAS pole for numerous factors, including but not limited to, visual impact, design, and safety standards.
- B. Antenna and all support installations for equipment on existing facilities or new poles shall be designed so as to minimize visual impacts as follows:
- (1) Antenna and all support equipment shall be treated to match the supporting structure. Antenna and accompanying equipment shall be painted, or otherwise coated to be visually compatible with the support structure upon which they are mounted.
 - (2) All equipment shall be compatible in scale and proportion to the structure upon which they are mounted. All equipment used shall utilize the smallest and least intrusive technology available.
 - (3) There shall be no more than one (1) such antenna per pole. One (1) additional antenna may be permitted provided that such antenna can be designed and accommodated on a pole in a manner that complies with the requirements of this section.
 - (4) No antenna shall exceed a height of four (4) feet above the structure upon which they are mounted.
 - (5) Antenna shall not project more than four (4) inches from the pole upon which it is attached.
- C. Within sixty (60) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of an antenna in the public right-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any antenna when the Borough, consistent with its authority under the police power and state law, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
- (2) The operations of the Borough or other governmental entity in the right-of-way;
- (3) Vacation of a street or road or the release of a utility easement; or
- (4) An Emergency as determined by the Borough.

D. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all communication antenna(s) in the right-of-way based upon public safety, traffic management, physical burden on the right-of-way, and related considerations. The applicant/owner/operator of the antenna or "DAS" system shall be responsible for the repair of any damage to paving, existing utility lines, or any surface or subsurface installations arising from its construction, installation or maintenance.

Section 3. If any section, subsection or part of this ordinance is adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not impair or invalidate the remainder of this ordinance.

Section 4. This Ordinance shall take effect upon final adoption and publication as provided by law.

Frank E. Matthews
Council President

Attest:
Lori DiBella, RMC, CMC
Borough Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on April 3, 2019. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough on May 1, 2019 at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Borough of Hawthorne website, www.hawthornenj.org and at the Clerk's Office in said Municipal Building during regular business hours at no cost to the members of the general public who shall request the same.

Lori DiBella, RMC, CMC
Borough Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING ON MAY 1, 2019.

ATTEST:

Frank E. Matthews, Council President

Lori DiBella, RMC, CMC, Borough Clerk

APPROVED:

Richard S. Goldberg, Mayor