



COMMONWEALTH OF PENNSYLVANIA  
BOROUGH OF EAST STROUDSBURG  
MONROE COUNTY

**ORDINANCE NO. 1370-2020**

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF EAST STROUDSBURG, MONROE COUNTY, PENNSYLVANIA (“BOROUGH”) AMENDING CHAPTER 154, WATER, OF THE CODIFIED ORDINANCES OF THE BOROUGH OF EAST STROUDSBURG AND AMENDING ITS SCHEDULE OF RATES, BY: 1) AMENDING SECTION 154-3 (WORD USAGE: DEFINITIONS) FOR THE FOLLOWING DEFINITIONS: A) “EDU” (EQUIVALENT DWELLING UNIT) BY ADDING A NEW SUBSECTION E; B) “STANDBY FEE” TO INCLUDE THAT NO PREMISES WITH AN UNMETERED FIRE PROTECTION SERVICE LINE SHALL HAVE A STANDBY FEE WAIVED AND PAUSING THE RECALCULATION OF STANDBY FEES TO THOSE EBUS ASSESSED FROM SEPTEMBER 1, 2020 TO FEBRUARY 28, 2023; 2) AMENDING SECTION 154-5 (APPLICATION OF SERVICE, PART D, SUBSECTION 1) TO INCORPORATE THE DEFINITION “MATERIAL CHANGE INCREASE IN FLOW” AND BY ADDING A NEW SUBSECTION 2 TO SECTION 154 WHICH EXPLAINS THE PROCESS FOR REDUCTION IN EDUS BASED UPON A MATERIAL CHANGE DECREASE IN FLOW AND THEREAFTER RENUMBERING EXISTING SECTIONS; 3) AMENDING SECTION 154-8 (CHARGES FOR WATER SERVICES), SUBSECTION C (3), (4), (5), AND (6) PERTAINING TO THE PROCESS OF ANNUAL AND SEMI-ANNUAL CALCULATIONS OF EBUS AND PAUSING THE RECALCULATIONS OF EBUS FOR THE PERIOD BETWEEN SEPTEMBER 1, 2020 AND FEBRUARY 28, 2023 BY SETTING THE WATER USAGE DATA TO BE APPLIED AS THE AVERAGE OF FOUR (4) QUARTERS WATER METER READINGS ENDING ON OR ABOUT AUGUST 31, 2020; 4) AMENDING CHAPTER 154 RATE SCHEDULE “A” 5) AUTHORIZING PROVISIONS FOR SEVERABILITY, REPEALER; AND 6) ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the Borough is a municipal corporation of the Commonwealth of Pennsylvania, organized and existing under the Pennsylvania Borough Code, as amended, 8 Pa.C.S. §101, *et seq.*, (“Pennsylvania Borough Code”); and

**WHEREAS**, the East Stroudsburg Borough Council of the Borough of East Stroudsburg, pursuant to §1202 (Specific powers) (1) (authority to prescribe reasonable fees) (2) (authority to operate and regulate utilities) (3) (authority to impose fines and penalties) (5) (make regulations for health, welfare, and safety of the Borough) (65) (authority to collect on water and sewer rates); §1203 (Reserved powers) authority to make and adopt ordinances, bylaws, rules and regulations for proper management and control of the Borough and its finances; Chapter 23, Water Systems, §2401, *et seq.*, including §2401, Power to supply water and make regulations as authorized by the Pennsylvania Borough Code; and

**WHEREAS**, commencing on March 6, 2020, the Governor of the Commonwealth of Pennsylvania (“Commonwealth”), pursuant to the provisions of Subsection 7301(c) of the Pennsylvania Emergency Management Services Code, 35 Pa.C.S. Section 7101, *et seq.*, declared the existence of a disaster emergency throughout the Commonwealth (“Emergency Declaration”) as a result of the spread of COVID-19 which Emergency Declaration, as subsequently amended, is still in effect at the writing of this Ordinance; and

**WHEREAS**, on March 19, 2020, 8:00 p.m., Governor Wolf issued an Order directing that all non-life sustaining businesses in Pennsylvania close their physical locations as listed on the Commonwealth of Pennsylvania’s website: <https://www.pa.gov> and on Pennsylvania Department of Health’s website: <https://www.health.pa.gov>; and

**WHEREAS**, on March 23, 2020, at 8:00 a.m., Governor Wolf issued a “stay-at-home” Order except for life-sustaining business and further directing that enforcement of the Order would commence on Monday, March 23, 2020, at 8:00 p.m. Governor Wolf amended his March 23, 2020 Order on March 24, March 25, March 27, March 28, March 30, March 31, 2020, April 1, 2020, April 15, 2020, April 17, 2020, May 7, 2020, June 4, 2020, June 8, 2020, June 25, 2020, July 2, 2020, which initiated and amended various “stay-at-home” and “business opening” Orders to citizens residing in the Commonwealth and individuals visiting the Commonwealth; and

**WHEREAS**, on March 17, 2020, the Borough of East Stroudsburg, Monroe County, Pennsylvania passed its first of a series of Proclamations of State of Emergency as a result of the novel Coronavirus COVID-19 pandemic which, in part, has maintained that water services were essential life sustaining activities; and

**WHEREAS**, the Borough has continued to operate and maintain its water utilities throughout the pandemic in order to provide continuous, safe, and reliable water services to meet the domestic and fire protection needs of the residential, commercial, industrial, and institutional customers; and

**WHEREAS**, throughout the ongoing emergency, the Borough has continued to incur the fixed costs of operating the water system, despite the closure of many commercial businesses, industries, and institutions served by the Borough public water system; and

**WHEREAS**, the Borough must be able to meet its financial obligations with regard to the water utilities in order that they may continue to provide continuous, safe, and reliable water services to meet the domestic and fire protection needs of the residential, commercial, industrial, and institutional customers; and

**WHEREAS**, the Borough, through Borough Council, believes it is in the best interest of the Borough's residents, businesses, industrial users, and institutional customers to continue to maintain its water utility services by amending its Ordinance to make up for potential further losses in revenue resulting from the ongoing pandemic.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of East Stroudsburg, Monroe County, Pennsylvania, that the following amendments and additions to Chapter 154 Water of the East Stroudsburg Code of Ordinances be adopted:

1. Section 154-3. Word usage; definitions shall be amended as follows:
  - A. Section (2) of the definition of EDU (EQUIVALENT DWELLING UNIT) shall be amended by the addition of a new Section (2) (e), to wit:
    - (e) Decrease water usage by more than ten (10%) percent over the previous twelve (12) months' water usage, as calculated in or about March of each year, and file a new or amended application with the Borough pursuant to Section 154-5 D, to reassess the EDU's assigned to the Premises.
  - B. The definition of STANDBY FEE is amended to add the following language to the end of the definition:

...No Premise with an unmetered fire protection service shall be eligible to have a Standby Fee waived. Notwithstanding anything herein to the contrary, the EBUs for the period between September 1, 2020 and February 28, 2023 shall be calculated in September 2020 and remain in effect through February 28, 2023 pursuant to Section 154-8 C (7) at which time the pause in recalculation of EBUs for a Standby Fee shall sunset pursuant to Section 154-8 C (7) and the recalculations shall commence per definition.
2. Section 154-5. Application for and conditions of service, D, Conditions of water service, shall be amended as follows:
  - A. Section 154-5 D (1) shall be amended to read:

Any Customer making any material change in the size, character, or extent of equipment or operations utilizing water service, or whose

change in operation results in a Material Change Increase In Flow, shall immediately give the Borough written notice of the nature of the change, and either amend its application if an application exists with the Borough or submit a new application, and pay all fees as applicable under the conditions of this Chapter.

B. A new subsection (2) shall be added to Section 154-5 D, to wit:

Any Customer claiming a change in operation which results in a Material Change Decrease In Flow, may file a new or amended application with the Borough pursuant to Section 154-5 D, to reassess the EDUs assigned to the Premises. The application shall provide the Borough written notice of the nature of the change, and shall include a request by the Customer to forfeit the capacity, or a portion thereof, previously allocated to the Premises. The Customer shall not be eligible for any refund as a result of the forfeit. If at some point in the future, the Premises requires additional water allocated to the property, the owner of the Premises shall be subject to making a request for the additional capacity required and, if that capacity is available, paying whatever Tapping Fees are in force at the time.

C. The existing subsections (2) through (10) of Section 154-5 D shall be renumbered as subsections (3) through (11).

3. Section 154-8, Charges for water service, shall be amended to temporarily suspend the recalculation of annual and semi-annual EBUs as set forth in Section C (3), (4), (5), and (6) by the addition of a new subsection (7) which shall read, as follows:

(7) In response to the declared Public Health Emergency throughout the Commonwealth, the Borough shall suspend the annual and semi-annual recalculation of Equivalent Billing Units (EBUs), as required by Section 154-8 C (3), (4), (5), and (6), to assess Non-Residential and Mixed Use Users, and shall fix the EBUs assessed on these Premises at the amount established based upon the average of four (4) quarterly water meter readings last taken on or about the last week in August 2020 for a period of thirty (30) months and ending the last week of February 2023. Assessed EBUs shall be fixed and remain in place unchanged for a period of thirty (30) months starting on September 1, 2020 through February 28, 2023. A Non-Residential or Mixed-Use Customer may request, once, between March 1, 2021 and August 31, 2022, in writing, that the Borough recalculate the EBUs for its Premises for the remainder of the period ending on February 28, 2023. A Non-Residential or Mixed-Use Customer request for its one-time recalculation of EBUs will only occur on one of the following reassessment dates: March 1, 2021, September 1, 2021, March 1,

2022, and September 1, 2022. The Borough will review this request and if appropriate, recalculate the EBUs to be assessed from the new reassessment date through the remainder of the period ending February 28, 2023. The reassessment shall be based upon the average of four (4) quarterly water meter readings last taken on or about the last week prior to the reassessment date on which the reassessed EBUs will take effect for the Premises. If the requested recalculation results in a reduction of capacity allocation for the Premises in the water system, as represented by EDUs, then the Customer shall forfeit the capacity previously allocated. The Customer shall not be eligible for any refund as a result of the forfeit. If at some point in the future, the Premises requires additional water allocated to the property, the owner of the Premises shall be subject to making a request for the additional capacity required and, if that capacity is available, paying whatever Tapping Fees are in force at the time. Nothing in this amendment shall be construed as affecting or nullifying the terms of any individual Payment Agreements, Attestations, or Notices of Payment Due that are in effect at the time of its adoption. The provision of Section 154-8, C (7), as set forth herein, shall sunset and expire thirty-two (32) months from the date of adoption unless further extended or modified by the act of Borough Council and, thereafter, the temporary suspension or pause of the recalculation of annual and semi-annual EBUs as set forth in Section 154-8, C (3), (4), (5), and (6) shall be reinstated.

4. **Water Rates.** Chapter 154 - Water Rate Schedule "A" [approved 11-6-2018] shall be amended in its entirety and replaced with Chapter 154 - Water Rate Schedule "A" [dated 07-28-2020] attached hereto and made a part of this Ordinance.

5. **Severability.** In case any one (1) or more of the provisions contained in this Ordinance shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Ordinance, and this Ordinance shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein.

6. **Repealer.** All Ordinances and parts of Ordinances heretofore adopted, to the extent that the same are inconsistent in any manner herewith, are hereby repealed.

7. **Further Amendment or Supplement.** The Borough's Schedule of Rates and Rules and Regulations as they exist may be supplemented or amended hereafter by majority vote of the Borough Council.

8. **Effective Date.** This Ordinance shall take effect immediately upon enactment and all other remaining rates and charges as otherwise established in a Schedule of Rates

and Rules and Regulations adopted by Borough Council shall remain in full force and effect to the extent not inconsistent with this Ordinance.

**ORDAINED AND ENACTED** into an Ordinance at a regular meeting of East Stroudsburg Borough Council, Monroe County, Pennsylvania, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

BOROUGH OF EAST STROUDSBURG

\_\_\_\_\_  
Brian S. Bond, Secretary

By: \_\_\_\_\_  
William T. Reese, Council President

Approved: \_\_\_\_\_

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Armand M. Martinelli, Mayor