

CHAPTER 15 ADOPTION OF THE METRO ACT

15.1 Purpose:

The purposes of this chapter are to regulate access to and ongoing use of public rights of way by telecommunication providers for their telecommunication facilities while protecting the public health, safety and welfare and exercising reasonable control of the public right of way in compliance with the Metropolitan Extension Telecommunications Rights of Way Oversight Act (Act No. 48 of the Public Acts of 2002)(“Act”) and any other applicable law and to ensure that the Village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

15.2 Conflict:

Nothing in this chapter shall be construed in such manner as to conflict with the Act or other applicable law.

15.3 Terms Defined:

The terms used in this chapter shall have the following meanings:

- (a) “Act” means the Metropolitan Extensions Telecommunications Rights of Way Oversight Act (Act No. 48 of the Public Acts of 2002) as amended from time to time.
- (b) “Village” means the Village of Central Lake.
- (c) “Village Council” means the Village Council of the Village of Central Lake or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.
- (d) “Village President” means the Village President or his or her designee.
- (e) “Permit” means a non-exclusive permit issued pursuant to the Act and this chapter to a telecommunication provided to use the public rights of way in the Village for its telecommunication facilities. All other terms in this chapter shall have the same meaning as defined or as provided in the Act including without limitation the following:
- (f) “Authority” means the Metropolitan Extension Telecommunications Rights of Way Oversight Authority created pursuant to Section 3 of the Act.
- (g) “MPSC” means the Michigan Public Service Commission in the Department of Consumer and Industry Services and shall have the same meaning as the term “Commission” in the Act.
- (h) “Person” means an individual, corporation, partnership, association, governmental entity or any other legal entity.

- (i) “Public Right of Way” means the area on, below or above a public roadway, highway, street, alley, easement or waterway. Public right of way does not include a federal, state or private right of way.
- (j) “Telecommunications Facilities or Facilities” means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes and sheaths which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part 1 of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3 and service provided by any wireless, two way communication device.
- (k) “Telecommunications Provider, Provider and Telecommunications Services” mean those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of Part 1 of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3 or service provided by any wireless, two way communications device. For the purpose of the Act and this ordinance only, a provider also includes any of the following:
 - (1) A cable television operator that provides a telecommunication service
 - (2) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right of way
 - (3) A person providing broadband internet transport access service.

15.4 Permit Required

- (a) Permit Required: Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights of way in the Village for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.
- (b) Application: Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, one copy with the Village President and one copy with the Village Attorney. Applications shall be complete and include all information required by the Act including without limitation a route map showing the

location of the provider's existing and proposed facilities in accordance with Section 6 (5) of the Act.

- (c) Confidential Information: If a telecommunications provider claims that any portion of the route maps submitted by it as a part of its application contain trade secrets, proprietary or confidential information which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 pursuant to Section 6 (5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.
- (d) Application Fee: Except as otherwise provided by the Act, the application shall be accompanied by a onetime non-refundable application fee in the amount of Five Hundred Dollars (\$500.00)
- (e) Additional Information: The Village President may request an applicant to submit such additional information which the Village President deems reasonable, necessary or relevant. The applicant shall comply with all such request in compliance with reasonable deadlines for such additional information established by the Village President. If the Village and the applicant cannot agree on the requirement of additional information requested by the Village, the Village or applicant shall notify the MPSC as provided in Section 6 (2) of the Act.
- (f) Previously Issued Permits: Pursuant to Section 5 (1) of the Act, authorizations or previously issued permits by the Village under Section 251 of the Michigan telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the Village to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.
- (g) Existing Providers: Pursuant to Section 5 (3) of the Act, within one hundred eighty (180) days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right of way in the Village as of such date that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act 1991 PA 179, MCL 484.2251 shall submit to the Village an application for a permit in accordance with the requirements of this chapter. Pursuant to Section 5 (3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the Five Hundred Dollar (\$500.00) application fee required under subsection 16.4d above. A provider under this subsection shall be given up to an additional one hundred eighty (180) days to submit the permit application ~~of~~ if allowed by the Authority as provided in Section 5 (4) of the Act.

15.5 Issuance of Permit

- (a) Approval or Denial: The authority to approve or deny an application for a permit is hereby delegated to the Village President. Pursuant to Section 15 (3)

of the Act, the Village President shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 16.4 (2) of this ordinance for access to a public right of way within the Village. Pursuant to Section 6 (6) of the Act, the Village President shall notify the MPSC when the Village President has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village President shall not unreasonably deny an application for a permit.

- (b) **Form of Permit:** If an application for permit is approved, the Village President shall issue the permit in the form approved by the MPSC with or without additional or different permit terms, in accordance with Sections 6 (1), 6(2) and 15 of the Act.
- (c) **Conditions:** Pursuant to Section 15(4) of the Act, the Village President may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public rights of way.
- (d) **Bond Requirement:** Pursuant to Section 15(3) of the Act and without limitation on subsection 16.4(c) above, the Village President may required that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right of way is returned to its original condition during and after the telecommunications provider's access and use.

15.6 Construction/Engineering Permit:

Should a telecommunications provider be required to secure a construction or engineering permit from the Village prior to commencement of construction within the Village pursuant to this code, no fee shall be charged for such a construction or engineering permit.

15.7 Conduit or utility Poles:

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider right to use conduit or utility poles.

15.8 Route Maps:

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within ninety (90) days after the substantial completion of construction of new telecommunications facilities in the Village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the Village. The route maps should be in paper format unless and until the Commission determines otherwise in accordance with Section 6(8) of the Act.

15.9 Repair of Damage:

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing a telecommunications facility within a public right of way or temporarily obstructing a public right of way in the Village as authorized by a permit shall promptly repair all damage done to the street surface and all installations under, over, below or within the public right of way to its preexisting condition.

15.10 Establishment and Payment of Maintenance Fee:

In addition to the non-refundable application fee paid to the Village set forth in Section 16.4.d. above, a telecommunications provider with telecommunications facilities in the Village's rights of way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

15.11 Modification of Existing Fees:

In compliance with the requirements of Section 13(1) of the Act, the Village hereby modifies to the extent necessary any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of public rights of way, to an amount not exceeding the amounts of fees and charges required under the Act which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the Village also hereby approves of modification of the fees of providers with telecommunication facilities in public rights of way within the Village's boundaries so that those providers pay only those fees required under Section 8 of the Act. The Village shall provide such telecommunications provider affected by the fee with a copy of this ordinance in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the Village's policy and intent and upon application by a provider or discovery by the Village shall be promptly refunded as having been charged in error.

15.12 Savings Clause:

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 15.11 above shall be void from the date modification was made.

15.13 Use of Funds:

Pursuant to Section 9(4) of the Act, all amounts received by the Village from the Authority shall be used by the Village solely for rights of way related purposes. In conformance with that requirement, all funds received by the Village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the Village under Act. No. 51 of the Public Acts of 1951.

15.14 Annual Report:

Pursuant to Section 10(5) of the Act, the Village President shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

15.15 Cable Television Operators:

Pursuant to Section 13(6) of the Act, the Village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

15.16 Existing Rights:

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the Village may have under a permit issued by the Village or under a contract between the Village and a telecommunications provider related to the use of the public rights of way.

15.17 Compliance:

The Village hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act and the provisions of this chapter should be construed in such a manner as to achieve that purpose.

15.18 Reservation of Police Powers:

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the Village's right to review and approve a telecommunication provider's access to and ongoing use of a public right of way or limit the Village's authority to ensure and protect the health, safety and welfare of the public.

15.19 Severability:

The various parts, sentences, paragraphs, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provision of this ordinance.

15.20 Authorized Village Officials:

The Village President or his or her designee is hereby designated as the authorized Village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this chapter as provided by the Village Code.

15.21 Municipal Civil Infraction:

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction. Nothing in this section shall be construed to limit the remedies available to the Village in the event of a violation by a person of this chapter or a permit.

15.22 Repealer:

All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.