

ORDINANCE NO. 154

AN ORDINANCE TO REGULATE ACCESS TO AND ONGOING USE OF THE PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS; TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE AND EXERCISE REASONABLE CONTROL OF THE PUBLIC RIGHTS-OF-WAY IN COMPLIANCE WITH MICHIGAN AND OTHER APPLICABLE LAW; AND TO ENSURE THAT THE VILLAGE OF DECATUR, MICHIGAN QUALIFIES FOR DISTRIBUTIONS UNDER MICHIGAN LAW BY MODIFYING THE FEES CHARGED TO TELECOMMUNICATIONS PROVIDERS.

THE VILLAGE OF DECATUR, MICHIGAN ORDAINS:

Section 1- Purpose.

The purposes of this Ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-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 other applicable law, and to ensure that the Village of Decatur, Michigan qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

Section 2- Conflict.

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

Section 3- Terms Defined.

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

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002-MCL 484.3101), as amended from time to time.¹

Village means the Village of Decatur, Van Buren County, Michigan.

Village Council means the Village Council of the Village of Decatur, Van Buren County, MI 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.

Village Manager means the Village Manager or his/her designee.

¹ A copy of the Act can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Permit means a non-exclusive permit issued pursuant to the Act and this Ordinance to a telecommunications provider to use the public rights-of-way in the Village for its telecommunications facilities.

All other terms used in this Ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

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.

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

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.

Telecommunication 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 I 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.

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 I 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 communication device. For the purpose of the Act and this Ordinance only, a provider also includes all of the following:

- (a) A cable television operator that provides a telecommunications service.
- (b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- (c) A person providing broadband internet transport access service.

Section 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 Ordinance.

(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 and one copy with the Village Manager. 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.²

(c) *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, 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 one-time non-refundable application fee in the amount of \$500.00.

(e) *Additional Information.* The Village Manager may request an applicant to submit such additional information which the Village Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village Manager. If the Village and the applicant cannot agree on the requirement of additional information requested by the Village, the Village or the 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 permits previously issued 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 Ordinance.

² A copy of the application form as approved by the Commission can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

(g) *Existing Providers.* Pursuant to Section 5(3) of the Act, within 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 Ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

Section 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 Manager. Pursuant to Section 15(3) of the Act, the Village Manager 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 4(b) of this Ordinance for access to a public right-of-way within the Village. Pursuant to Section 6(6) of the Act, the Village Manager shall notify the MPSC when the Village Manager 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 Manager shall not unreasonably deny an application for a permit.

(b) *Form of Permit.* If an application for permit is approved, the Village Manager 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.³

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the Village Manager 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 right-of-way.

(d) *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the Village Manager may require 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.

Section 6- Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the Village without first obtaining a construction or engineering permit as required under this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such construction or engineering permit.

³ Copies of the permit forms currently approved by the MPSC can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Section 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 Ordinance does not give a telecommunications provider a right to use conduit or utility poles.

Section 8- Route Maps.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 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 MPSC determines otherwise, in accordance with Section 6(8) of the Act.

Section 9- Repair of Damage.

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities 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 and shall promptly restore the public right-of-way to its preexisting condition.

Section 10- Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the Village set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the Village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Section 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 the 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 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 each 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.

Section 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 11 above shall be void from the date the modification was made.

Section 13- Use of Funds.

Pursuant Section 10(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.

Section 14- Annual Report.

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

Section 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.

Section 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.

Section 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 hereof should be construed in such a manner as to achieve that purpose. The Village shall comply in all respects with the requirements of the Act, including but not limited to the following:

- (a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this Ordinance;
- (b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this Ordinance;
- (c) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 4(g) of this Ordinance;

(d) Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the Village, in accordance with Section 5(a) of this Ordinance;

(e) Notifying the MPSC when the Village has granted or denied a permit, in accordance with Section 5(a) of this Ordinance;

(f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this Ordinance;

(g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(b) of this Ordinance;

(h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this Ordinance;

(i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this Ordinance;

(j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this Ordinance;

(k) Providing each telecommunications provider affected by the Village's right-of-way fees with a copy of this Ordinance, in accordance with Section 11 of this Ordinance;

(l) Submitting an annual report to the Authority, in accordance with Section 14 of this Ordinance; and

(m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this Ordinance.

Section 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.

Section 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 provisions of this Ordinance.

Section 20- Authorized Village Officials.

The Village Manager or his/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 Ordinance as provided by the Village Code.

Section 21- Municipal Civil Infraction.

A person who violates any provision of this Ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to a civil fine not exceeding \$500.00, plus any costs, damages, expenses or other sanctions as authorized under chapters 83 and 87 of Act 236 of the Michigan Public Acts of 1961 as amended, being MCL 600.8302 and MCL 600.8701 et seq. Each day that a violation continues shall be deemed a separate violation of this Ordinance. Nothing in this Section 21 shall be construed to limit the remedies available to the Village in the event of a violation by a person of this Ordinance or a permit.

Section 22- Repeal.

All Ordinances and portions of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 23- Effective Date.

This Ordinance shall take effect on November 25, 2002.

Adopted by the Village Council of the Village of Decatur, Michigan on this 4th Day of November, 2002.