

CHAPTER 1050

TELECOMMUNICATIONS

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CROSS REFERENCES

Metropolitan Extension Telecommunications Rights-of-Way Oversight Act - see MCL

484.3101, et seq

Utilities generally - see CHTR. Ch. XI

Municipally owned utilities - see CHTR. Ch. XII

1050.01 PURPOSES.

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 City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 584. Passed 10-20-02.)

1050.02 CONFLICT.

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

(Ord. 584. Passed 10-20-02.)

1050.03 DEFINITIONS

(a) The terms used in this ordinance shall have the following meanings:

- i. **Act** means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time. Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.
- ii. **City** means the City of Traverse City.

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- iii. **City Commission** means the City Commission of the City of Traverse City or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Commission.
 - iv. **City Manager** means the City Manager or his or her designee.
 - v. **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.
 - vi. **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 City for its telecommunications facilities.
 - vii. **Person** means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
 - viii. **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.
 - ix. **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.
 - x. **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:
 - 1) A cable television operator that provides a telecommunications 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.
- (b) All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act.
- (Ord. 584. Passed 10-20-02.)

1050.04 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 City 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 City Clerk. Upon receipt, the City Clerk shall make six (6) copies of the application and distribute a copy to the City Manager, the City Engineer, the Executive Director of Traverse City Light & Power, the Streets Department, the City Police Department, and the City Fire Department. 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 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 City Manager may request an applicant to submit such additional information which the City 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 City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City 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 City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City 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.
 - (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 City 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 City 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.
- (Ord. 584. Passed 10-20-02.)

1050.05 ISSUANCE OF PERMIT.

- (a) Approval or Denial. The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City

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 City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City 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 City Manager shall not unreasonably deny an application for a permit.

- (b) Form of Permit. If an application for permit is approved, the City 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.
- (c) Conditions. Pursuant to Section 15(4) of the Act, the City Manager may impose the following conditions on the issuance of a permit:
 - 1) Construction Standards; Safety. All construction, installation, maintenance, and operation of any telecommunication service or of any facilities employed in connection therewith shall be in compliance with applicable provisions of the National Electrical Safety Code, as prepared by the National Bureau of Standards, the National Electrical Code of the National Fire Protection Association, the Bell Telephone Systems Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto. Each system installed, constructed, maintained, or operated shall be so designed, constructed, installed, maintained, and operated as not to endanger or interfere with the safety of persons or property.
 - 2) Street Openings; Barricades, and Warning Lights. Any opening or obstruction in, disturbance of, or damage to a road, street, alley, public right-of-way or public place by any person in the exercise of any right granted pursuant to a permit shall be properly guarded by barriers, lights, signals, and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public right-of-way or public place and shall be promptly repaired, at the permit holder's expense, all in a manner specified and approved by the City. Such approval shall not be unreasonably withheld.
 - 3) Relocation of Facilities. A telecommunication provider or a person acting under a telecommunication provider shall, at its expense, and without reimbursement from the City, upon request of the City relocate, remove, temporarily disconnect, protect, or support facilities in the roads, streets, alleys, easements, public rights-of-way or public places. A telecommunication provider shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than 30 days in advance of the activity requested, unless an emergency situation exists.
 - 4) Damage to Right-of-way. The telecommunication provider's access and usage shall not cause damage to the street or trees, benches, landscaping, or other objects lawfully located within the right-of-way.
 - 5) Right-of-way Permit. The Traverse City Engineering Department's Terms and Conditions for a Right-of-Way Permit as appropriate.

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Additionally, a telecommunication provider is subject to the applicable terms and conditions contained in Chapter XI of the City's Charter and any other conditions the City Manager may impose relating to the telecommunication 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 City Manager shall require that a bond be posted by the telecommunications provider as a condition of the permit. 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.

(Ord. 584. Passed 10-20-02.)

1050.06 CONSTRUCTION/ENGINEERING PERMIT.

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

(Ord. 584. Passed 10-20-02.)

1050.07 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.

(Ord. 584. Passed 10-20-02.)

1050.08 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 City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in paper and in GIS format unless and until either the City or the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

(Ord. 584. Passed 10-20-02.)

1050.09 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 City, 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.

(Ord. 584. Passed 10-20-02.)

1050.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

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

(Ord. 584. Passed 10-20-02.)

1050.11 MODIFICATION OF EXISTING FEES.

In compliance with the requirements of Section 13(1) of the Act, the City 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 City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City 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 City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

(Ord. 584. Passed 10-20-02.)

1050.12 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.

(Ord. 584. Passed 10-20-02.)

1050.13 USE OF FUNDS.

Pursuant to Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 51 of the Public Acts of 1951.

(Ord. 584. Passed 10-20-02.)

1050.14 ANNUAL REPORT.

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

(Ord. 584. Passed 10-20-02.)

1050.15 CABLE TELEVISION OPERATORS.

Pursuant to Section 13(6) of the Act, the City 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. This ordinance does not affect the requirements of cable operators to obtain a franchise as required by Traverse City Code of Ordinances Chapter 1048.

(Ord. 584. Passed 10-20-02.)

1050.16 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 City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.
(Ord. 584. Passed 10-20-02.)

1050.17 COMPLIANCE.

The City 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 City 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 City, in accordance with Section 5(a) of this ordinance;
- (e) Notifying the MPSC when the City 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 City'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.

(Ord. 584. Passed 10-20-02.)

1050.18 RESERVATION OF POLICE POWERS.

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.
(Ord. 584. Passed 10-20-02.)

1050.19 COSTS FOR WORK BY GOVERNMENTAL ENTITY.

If, after reasonable notice and opportunity to correct, a telecommunications service provider or any person acting under a telecommunications service provider fails to commence, pursue, or complete any work required by law or this ordinance to be done in any road, street, alley, public right-of-way, easement, or public place, the appropriate governmental entity may cause such work to be done, and such telecommunications service provider shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.
(Ord. 584. Passed 10-20-02.)

1050.20 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.
(Ord. 584. Passed 10-20-02.)

1050.21 AUTHORIZED BY CITY OFFICIALS.

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations or municipal civil infraction violation notices on a form approved by the City Attorney for violations under this ordinance as provided by the City's ordinances.
(Ord. 584. Passed 10-20-02.)

1050.22 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. Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.
(Ord. 584. Passed 10-20-02.)

1050.23 REPEALER.

All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.
(Ord. 584. Passed 10-20-02.)