

**CITY OF GRANT
ORDINANCE NO. 47**

**AN ORDINANCE
TO REGULATE ACCESS TO AND ONGOING USE OF PUBLIC RIGHTS-OF-WAY
BY TELECOMMUNICATIONS PROVIDERS
FOR THEIR TELECOMMUNICATIONS FACILITIES**

THE CITY OF GRANT ORDAINS:

Ordinance No. 47: “Use of Public Rights-of-Way by Telecommunications Providers” is Hereby established as Follows:

**ARTICLE I: USE OF PUBLIC RIGHTS-OF-WAY
BY TELECOMMUNICATION PROVIDERS**

Sec. 1.0 Purpose

The purposes of this Article 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) (hereinafter "Act") and other applicable law, and to ensure that the City of Grant qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

Sec 2.0 Conflict

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

Sec. 3.0 Terms Defined

The terms used in this Article 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), as amended from time to time.

City means the City of Grant (hereinafter “City.”)

City Commission means the City Commission of the City of Grant (hereinafter “Commission”) or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the Commission.

City Manager means the City Manager or his or her designee.

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

All other terms used in this Article 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 (hereinafter "MPSC"), 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 (hereinafter "public ROW") 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 (hereinafter "telecom 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 (hereinafter "telecom provider" or "telecom service") 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 Article only, a provider also includes all of the following:

- a. A cable television operator that provides a telecom service.
- b. Except as otherwise provided by the Act, a person who owns telecom facilities located within a public ROW.
- c. A person providing broadband Internet transport access service.

Sec. 4.0 Permit Required

- a. Permit Required. Except as otherwise provided in the Act, a telecom provider using or seeking to use public ROW in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this Article.
- b. Application. Telecom providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecom provider shall file one copy of the application with the City Clerk, one copy with the City Manager and one copy with the City 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 telecom provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary or confidential information that is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, then pursuant to Section 6(5) of the Act, the telecom provider shall prominently so indicate on the face of each map.
- d. Application Fee. Except as otherwise provided by the Act, a one-time non-refundable application fee in the amount of \$500.00 shall accompany the application.
- e. Additional Information. The City Manager may request an applicant to submit such additional information that 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 telecom providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this Article.
- 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 telecom provider with facilities located in a public ROW 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 Article. Pursuant to Section 5(3) of the Act, a telecom 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.

Sec. 5.0 **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 telecom provider files an application for a permit under Section 4(b) of this Article for access to a public ROW 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 conditions on the issuance of a permit, which conditions shall be limited to the telecom provider's access and usage of the public ROW.
- d. *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on Subsection (c) above, the City Manager may require that a bond be posted by the telecom provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public ROW is returned to its original condition during and after the telecom provider's access and use.

Sec. 6.0 **Construction/Engineering Permit**

A telecom provider shall not commence construction upon, over, across or under the public ROW in the City without first obtaining a construction, zoning, or engineering permit as required under City policy and ordinance, for construction within the public ROW. No fee shall be charged for such a construction or engineering permit.

Sec. 7.0 **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 Article does not give a telecom provider a right to use conduit or utility poles.

Sec. 8.0 **Route Maps**

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

Sec. 9.0 **Repair of Damage**

Pursuant to Section 15(5) of the Act, a telecom provider undertaking an excavation or construction or installing telecom facilities within a public ROW or temporarily obstructing a public ROW 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 ROW and shall promptly restore the public ROW to its preexisting condition.

Sec. 10.0 **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 telecom provider with telecom facilities in the City's public ROW shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Sec. 11.0 **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 telecom providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public ROW, 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 telecom facilities in public ROW 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 telecom provider affected by the fee with a copy of this Article, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecom 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.

Sec. 12.0 **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.

Sec. 13.0 **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 ROW 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.

Sec. 14.0 **Annual Report**

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

Sec. 15.0 **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.

Sec. 16.0 **Existing Rights**

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

Sec. 17.0 **Compliance**

The City hereby declares that its policy and intent in adopting this Article 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 80(c) of this Article;
- b. Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this Article;
- 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 Article;
- d. Approving or denying an application for a permit within forty-five (45) days from the date a telecom provider files an application for a permit for access to and usage of a public ROW within the City, in accordance with Section 5(a) of this Article;
- e. Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(a) of this Article;
- f. Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this Article;
- 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 Article;
- h. Limiting the conditions imposed on the issuance of a permit to the telecom provider's access and usage of the public ROW, in accordance with Section 5(c) of this Article;
- i. Not requiring a bond of a telecom provider that exceeds the reasonable cost to ensure that the public ROW is returned to its original condition during and after the telecom provider's access and use, in accordance with Section 5(d) of this Article;
- j. Not charging any telecom providers any additional fees for construction, zoning, or engineering permits, in accordance with Section 6 of this Article;
- k. Providing each telecom provider affected by the City's ROW fees with a copy of this Article, in accordance with Section 11 of this Article;
- l. Submitting an annual report to the Authority, in accordance with and if required by Section 14 of this Article; 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 Article.

Sec. 18.0 **Reservation of Police Powers**

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

Sec. 19.0 **Severability**

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

Sec. 20.0 **Authorized City Officials**

The City Manager or his or her designee is hereby designated as the authorized City 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 Article as provided by the City Code or Ordinance.

Sec. 21.0 **Municipal Civil Infraction**

A person who violates any provision of this Article or the terms or conditions of a permit is responsible for a municipal civil infraction and shall be subject to civil infraction fines and costs as provided by The City of Grant's Codes, Resolutions, and Ordinances. 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 Article or a permit.


Sec. 22.0 **Repealer**

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

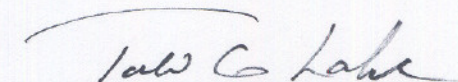
Sec. 23.0 **Effective Date**

This Ordinance shall take effect upon publication as provided by the Grant City Charter.

Commissioner Sorden moved the adoption of the foregoing Ordinance, which was seconded by Commissioner Gardner, and thereupon adopted by the City of Grant at a regular meeting, held this 17th day of February 2003.



Terry A. Fett, Mayor



Tobi Lake, City Manager/Clerk

I, TOBI LAKE, City Clerk for the City of Grant, hereby certify that the foregoing is a true and correct copy of an Ordinance of the City of Grant, adopted at a regular meeting of said City Commission held on February 17, 2003 and the whole thereof, as appears of record in the minutes of the meetings of said City now in my custody.



Tobi Lake, City Manager/Clerk