

TELECOMMUNICATIONS ORDINANCE

Sec. 1 Purpose.

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

Sec. 2 Conflict.

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

Sec. 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), as amended from time to time.1

Village means the Village of Muir.

Village Council means the Village Council of the Village of Muir 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 President means the Village President or his or her designee.

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 as 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, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunications services or signals. Telecommunications 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 Provider and Telecommunications Services mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunications 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 telecommunications facilities located within a public right-of-way.

(c) A person providing broadband internet transport access service.

Sec. 4 Permit Required.

(a) *Permit Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use 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, one copy with the Village President, and a copy with the Village Attorney. Upon receipt, the Village Clerk shall make copies of the application and distribute a copy to additional recipients. 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 Village President may request an applicant to submit such additional information which the Village President 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 President. 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 authorization 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.

(g) *Existing Providers.* Pursuant to Section 5(3) of the Act, within 180 days from December 12, 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 PA179, 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 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 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 permit within forty-five (45) days from the date a telecommunications provider files an application for 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 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 right-of-way.

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

Sec. 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 by the Village of Muir Council for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

Sec. 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.

Sec. 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 the Village. The route maps should be in (paper or electronics) format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

Sec. 9 Repair 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 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.

Sec. 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 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.

Sec. 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 December 12, 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 Villages 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 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.

Sec. 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.

Sec. 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.

Sec. 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 disturbed by the Authority.

Sec. 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 December 12, 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 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.

Sec. 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 constructed 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 \$500.00 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) Notify 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, 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 rights-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.

Sec. 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 telecommunications 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.

Sec. 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.

Sec. 20 Authorized City 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 ordinance as provided by the Village Code.

Sec. 21 Municipal Civil Infraction.

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for municipal civil infraction, and shall be subject to [specify local civil infraction fines or ordinance section references here]. [If the Village does not have a municipal civil infraction ordinance: A violation of this ordinance shall be a violation of the Village Code.] 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.

Sec. 22 Repealer.

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

Sec. 23 Effective Date.

This ordinance shall take effect on December 12, 2002.

Published November 12, 2002. Effective December 12, 2002

Laura Stewart,
Village Clerk

SUMMARY OF ORDINANCE NO. 48 TELECOMMUNICATIONS ORDINANCE

Pursuant to MCLA 41.184, the Village of Muir hereby publishes the following Summary of Ordinance No 48, the Telecommunications Ordinance, which was adopted by the Township Board on November 5, 2002:

Sec. 1. Purpose. The purposes of this Ordinance are set forth in this Section.

Sec. 2. Conflict. Nothing in this Ordinance shall be construed in such a manner as to conflict with the Metropolitan Extension Telecommunications Right-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act"), or other applicable law.

Sec. 3. Terms defined. Key terms are defined.

Sec. 4. Permit Required. The Ordinance requires a telecommunications provider using or seeking to use the Village's public rights-of-way to apply for and obtain a permit. The Ordinance further sets forth permit application information.

Sec. 5. Issuance of Permit. The Ordinance sets forth the review process for telecommunications permit applications. The Ordinance also sets forth the form of permit to be issued, and the authority to attach conditions and require a bond.

Sec. 6. Reserved.

Sec. 7. Conduit or Utility Poles. Obtaining a permit or paying the fees required under the Act does not give a telecommunications provider the right to use conduit or utility poles.

Sec. 8. Route Maps. The Ordinance requires a telecommunications provider to route maps, in a paper format, showing the location of its telecommunications facilities.

Sec. 9. Permit Required. The ordinance requires a telecommunications provider to promptly repair all damage done to the street in connection with its use of the public rights-of-way.

Sec. 10. Establishment and Payment of Maintenance Fee. The Ordinance sets forth the fees that must be paid pursuant to the Act.

Sec. 11. Modification of Existing Fees. The Ordinance modifies the fees charged to telecommunications providers after November 1, 2002.

Sec. 12. Savings Clause. If Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void.

Sec. 13. Use of Funds. All money received by the village pursuant to the Act shall be used solely for rights-of-way related purposes.

Sec. 14. Annual Report. The Village President is required to file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

Sec. 15. Cable and Television Operators. The Ordinance limits the Village's ability to hold a cable television operator in default or to seek a remedy for its failure to pay a franchise fee after November 1, 2002.

Sec. 16. Existing Rights. The Ordinance shall not affect existing rights a telecommunication provider or the Village may have under a permit or a contract related to the use of the public rights-of-way.

Sec. 17. Compliance. The Village is adopting this Ordinance is to fully comply with the Act's requirements. A list of those requirements is provided in the Ordinance.

Sec. 18. Reservation of Police Powers. The Village's reasonable control of its public rights-of-way for health, safety and welfare purposes is preserved.

Sec. 19. Severability. The Ordinance contains a severability provision should a portion of it be determined unconstitutional or invalid.

Sec. 20. Authorized Village Officials. The Village President or his/her designee is authorized to issue municipal civil infraction citations.

Sec. 21. Municipal Civil Infraction. Violations of this Ordinance constitutes a municipal civil infraction. The Ordinance provides further information regarding civil infraction violations, including fines and costs.

Sec. 22. Repealer. All ordinances and portfons of ordinances inconsistent with this Ordinance are hereby repealed.

Sec. 23. Effective Date. The Ordinance takes effect thirty (30) days after the publication in a newspaper of general circulation within the Village

The publication of this Summary of the Telecommunications Ordinance is intended to meet the requirements for publication as provided by law. A true and complete copy of Telecommunications Ordinance is on file and available for public inspection or copying by contacting the office of the Village Clerk at: 122 Superior Street, Muir, Michigan 48860

VILLAGE OF MUIR
122 SUPERIOR ST.
MUIR, MI. 48860

By: Laura Stewart
Village Clerk