

TITLE EIGHT - Telecommunications
Chap. 1080. Telecommunications.

CHAPTER 1080
Telecommunications

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1080.01 PURPOSE.

The purposes of this chapter 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) "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.

- (b) "Authority" means the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Authority created pursuant to Section 3 of the Act.
- (c) "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.
- (d) "Permit" means a non-exclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the Village for its telecommunications facilities.
- (e) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- (f) "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.
- (g) "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 C.F.R. 20.3, and service provided by any wireless, two-way communication device.
- (h) "Telecommunications provider", "Provider" and "Telecommunications services" mean those terms as defined in Section 102 of the Michigan Telecommunications Act, Act 179 of the Public Acts of 1991, being M.C.L.A. 84.2102. "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 C.F.R. 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this chapter 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.
- (i) "Village" means the Village of Caseville.

- (j) "Village Board" means the Village Council of the Village of Caseville 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.
- (k) "Village Clerk" means the Village Clerk or his or her designee.
(Ord. 2003-02. Passed 2-10-03.)

1080.03 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 and one copy with the Village Attorney. Upon receipt, the Village Clerk shall make _____ copies of the application and distribute a copy to: _____ . 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, Act 442 of the Public Acts of 1976, being M.C.L.A. 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 Clerk may request an applicant to submit such additional information which the Village Clerk 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 Clerk. 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, authorization or permits previously issued by the Village under Section 251 of the

Michigan Telecommunications Act, Act 179 of the Public Acts of 1991, being M.C.L.A. 84.2251 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 requirements of this chapter.

(g) Existing providers. Pursuant to Section 5(3) of the Act, within one hundred eighty 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, Act 179 of the Public Acts of 1991, being M.C.L.A. 84.2251, 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 division is not required to pay the \$500.00 application fee required under division (c) above. A provider under this division shall be given up to an additional one hundred eighty days to submit the permit application if allowed by the authority, as provided in Section 5(4) of the Act.

(Ord. 2003-02. Passed 2-10-03.)

1080.04 ISSUANCE OF PERMIT.

(a) Approval or denial. The authority to approve or deny an application for a permit hereby delegated to the Village Clerk. Pursuant to Section 15(3) of the Act, the Village Clerk shall approve or deny an application for a permit within forty-five days from the date as telecommunications provider files an application for a permit under Section _____ of this chapter for access to a public right-of-way within the Village. Pursuant to Section 6(6) of the Act, the Village Clerk shall notify the MPSC when the Village Clerk has granted or denied a permit, including information regarding the date on which the application was filed and the date on which the permit was granted or denied. The Village Clerk shall not unreasonably deny an application for a permit.

(b) Form of permit. If an application for permit is approved, the Village Clerk 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 Clerk 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 division (c) above, the Village Clerk 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.05 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 a construction or engineering permit.

(Ord. 2003-02. Passed 2-10-03.)

1080.06 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 a right to use conduit or utility poles.

(Ord. 2003-02. Passed 2-10-03.)

1080.07 ROUTE MAPS.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within ninety days after the substantial completion of construction of new telecommunication 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 or electronic format unless and until the Commission determines otherwise, in accordance with Section 6(8) of the Act.

(Ord. 2003-02. Passed 2-10-03.)

1080.08 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.09 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

In addition to the non-refundable application fee paid to the Village set forth in Section 1080.03(d), 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.10 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-ways, 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 chapter, 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.11 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 1080.10 shall be void from the date the modification was made.

(Ord. 2003-02. Passed 2-10-03.)

1080.12 USE OF FUNDS.

Pursuant to 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.13 ANNUAL REPORT.

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

(Ord. 2003-02. Passed 2-10-03.)

1080.14 CABLE TELEVISION OPERATORS.

Pursuant to Section 13(6) of the Act, the Village shall not hold a cable television operator in default of 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.15 EXISTING RIGHTS.

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this chapter 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.16 COMPLIANCE.

The Village hereby declares that its policy and intent in adopting this chapter 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, Act 442 of the Public Acts of 1976, being M.C.L.A. 15.231 and 213.246, as provided in Section 1080.03(c);
- (b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 1080.03(f);
- (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 1080.03(g);
- (d) Approving or denying an application for a permit within forty-five 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 1080.04(a);
- (e) Notifying the MPSC when the Village has granted or denied a permit, in accordance with Section 1080.04(a);

- (f) Not unreasonably denying an application for a permit, in accordance with Section 1080.04(a);
- (g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 1080.04(b);
- (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 1080.04(c);
- (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 1080.04(d);
- (j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 1080.05;
- (k) Providing each telecommunications provider affected by the Village's right-of-way fees with a copy of this chapter, in accordance with Section 1080.10;
- (l) Submitting an annual report to the authority, in accordance with Section 1080.13; and
- (m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 1080.14.
(Ord. 2003-02. Passed 2-10-03.)

1080.17 RESERVATION OF POLICE POWERS.

Pursuant to Section 15(2) of the Act, this chapter 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.

(Ord. 2003-02. Passed 2-10-03.)

1080.99 PENALTY.

(a) A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to payment of a civil fine of not less than \$50.00, reimbursement to the Village for charges assessed for the expense of enforcing this chapter, plus costs and other sanctions for each infraction. Repeat offenses under this chapter shall be subject to increased fines as provided below.

(b) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this chapter. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any 18 month period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense shall be as follows:

- (1) The fine for any offense which is a first repeat offense shall be no less than \$250.00 plus reimbursement to the Village of charges assessed for the expense of enforcing this chapter, plus costs and other sanctions for each infraction.
- (2) The fine or any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$500.00 plus reimbursement to the Village for charges assessed for the expense of enforcing this chapter, plus costs and other sanctions for each infraction.

(c) 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.
(Ord. 2003-02. Passed 2-10-03.)