

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NO. 59

HAMPTON CHARTER TOWNSHIP
METROPOLITAN EXTENSION
TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE

Adopted: NOVEMBER 10, 2003

Effective: NOVEMBER 25, 2003

An ordinance to comply with Act No. 48 of the Public Acts of 2002, known as the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act and other applicable law, to insure that the Charter Township of Hampton qualifies for distributions under the Act; to provide penalties for violation of said Ordinance, and to repeal all ordinances and parts of ordinances in conflict.

THE BOARD OF TRUSTEES OF THE CHARTER TOWNSHIP OF HAMPTON
BAY COUNTY, MICHIGAN, ORDAIN:

Sec.1 Title and Purpose.

This ordinance shall be known and cited as the Charter Township of Hampton Metropolitan Extension Telecommunications Rights-of-Way Ordinance.

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 Township 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.

Township means the Charter Township of Hampton.

Trustees means the Charter Township of Hampton Board of Trustees or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the Trustees.

Supervisor means the Hampton Township Supervisor 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 Township 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, ordinance 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 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 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.

Sec. 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 Township 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 three (3) copies of the application with the Township Clerk. 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 Supervisor may request an applicant to submit such additional information which the Supervisor 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 Supervisor. If the Township and the applicant cannot agree on the requirement of additional information requested by the Township, the Township 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 Township under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the Township 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 Township 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 Township 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 (c) above. A provider under this section 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 Supervisor. Pursuant to Section 15(3) of the Act, the Supervisor 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 Township. Pursuant to Section 6(6) of the Act, the Supervisor shall notify the MPSC when the Supervisor 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 Supervisor shall not unreasonably deny an application for a permit.

(b) *Form of Permit.* If an application for permit is approved, the Supervisor shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Section 6(1), 6(2) and 15 of the Act.

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the Supervisor 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 Supervisor 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 Township without first obtaining a construction or engineering permit as otherwise required by Township Ordinance, as amended, 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 Township, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the Township. The route maps may be in paper or electronic format unless and until the Trustees determine otherwise, in accordance with Section 6(8) of the Act.

Sec. 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 Township, 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.

Sec. 10 Establishing and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the Township set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the Township'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 Township 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 Township also hereby approves modification of the fees of providers with telecommunications facilities in public rights-of-way within the Township's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The Township 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 Township's policy and intent, and upon application by a provider or discovery by the Township, shall be promptly refundable as having been charged in error.

Sec. 12 Saving 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 to the Act, all amounts received by the Township from the Authority shall be used by the Township solely for rights-of-way related purposes. The Township shall deposit and account for all funds received pursuant to this Ordinance and the Act.

Sec. 14 Annual Report.

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

Sec. 15 Cable Television Operators.

Pursuant to Section 13(6) of the Act, the Township 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 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 Township may have under a permit issued by the Township or under a contract

between the Township and a telecommunications provider related to the use of the public rights-of-way.

Sec. 17 Compliance.

The Township hereby declared 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 Township 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, 215.246, as provided in Section 4(c) of this ordinance;

(b) Allowing certain previously issued permits to satisfy the permit requirements of this ordinance, 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 permits within forty-five (45) days from that date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the Township, in accordance with Section 5(a) of this ordinance;

(e) Notifying the MPSC when the Township 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 permits, in accordance with Section 6 of this ordinance;

(k) Providing each telecommunications provider affected by the Township'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.

Sec. 18 Reservation of Police Powers.

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the Township's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the Township'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 Violations and Penalties.

A person who violates any provision of this Ordinance or the terms or conditions of a permit, shall be liable to a fine of not more than Five Hundred Dollars (\$500.00), or to imprisonment for not more than ninety (90) days in the Bay County Jail, or both. Each and every day such violation continues shall be deemed a separate and distinct violation. Nothing in this Section shall be construed to limit the remedies available to the Township in the event of a violation by a person of this Ordinance or of a permit granted pursuant to this Ordinance.

Sec. 21 Repealer.

All ordinances and portions of ordinances inconsistent with the ordinance are hereby repealed.