

**VILLAGE OF EMPIRE
METRO ACT ORDINANCE
Ordinance No. 81 of 2003**

AN ORDINANCE TO CREATE REGULATIONS TO COMPLY WITH PUBLIC ACT 48 OF 2002, AND TO REGULATE PERMITTING AND USE OF VILLAGE RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS.

THE VILLAGE OF EMPIRE ORDAINS:

Section 1. Purpose.

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

Section 2. Conflict.

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

Section 3. Terms Defined.

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

- (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) "Village" means the Village of Empire.
- (c) "Village Council" means the Village Council of the Village of Empire 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.
- (d) "Village Clerk" means the Village Clerk or his or her designee.
- (e) "Village President" means the duly elected or appointed President of the Village of Empire, or his or her designee.

- (f) "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:

- (g) "Authority" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.
- (h) "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.
- (i) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- (j) "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.
- (k) "Telecommunications 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.
- (l) "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, ordinance 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 any 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.

Section 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 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 one copy with the Village 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 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 on-time non-refundable application fee in the amount of \$500.
- (e) Additional Information. The Village Council may request an applicant to submit such additional information which the Village Council 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 Council. 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 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 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 Village 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 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 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.

Section 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 Council. Pursuant to Section 15(3) of the Act, the Village Council 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 Village. Pursuant to Section 6(6) of the Act, the Village Clerk shall notify the MPSC when the Village Council 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 Council 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 Council 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 Council 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.

Section 6. Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public right-of-way in the Village without first obtaining a construction or engineering permit if such a permit is required by Village ordinance. No fee shall be charged for such a construction or engineering permit.

Section 7. Conduit of 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.

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

Section 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 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 pre-existing condition.

Section 10. Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the Village set forth in section 4(d) above, 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.

Section 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 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 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 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

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.

Section 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 modification was made.

Section 13. Use of Funds.

Pursuant to Section 9(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.

Section 14. 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.

Section 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 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.

Section 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.

Section 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 of this ordinance should be construed in such a manner as to achieve that purpose.

Section 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 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.

Section 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.

Section 20. Authorized Village 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 ordinance violations bureau) for violations under this ordinance.

Section 21. 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 as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered as a separate violation. 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 ordinance or a permit.

Section 22. Repealer.

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

ORDINANCE CERTIFICATION

At a special meeting of the Empire Village Council, Leelanau County, Michigan, held in the Village Hall located in Empire, Michigan, on June 10, 2003, at 7:30 p.m.

PRESENT: Ryan Deering, Susan Michener, Cheryl Fettes
Michael Deering, Nat Gray, Virginia Trago, Tim Simpson,

ABSENT: None

It as moved by Tim Simpson and supported by Cheryl Fettes that the following Ordinance be adopted.


(See attached VILLAGE OF EMPIRE METRO ACT ORDINANCE)

YES: All ayes

NO: None

ORDINANCE DECLARED ADOPTED.

VILLAGE OF EMPIRE

By: 
Michael Deering, President

I, the undersigned, the Clerk of the Village of Empire, Leelanau County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Empire Village Council of said County at its special meeting held on June 10, 2003, relative to adoption of the ordinance therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be made available as required by said Act; this ordinance was published in the Leelanau Enterprise on June 19, 2003.

Dated: June 11, 2003


Patricia L. Zoyhofski, Clerk

Note: The Ordinance and this Ordinance Certification should be placed in the Village Ordinance Book.