

TITLE XI: BUSINESS REGULATIONS

Chapter

110.GARAGE AND YARD SALES

111.TELECOMMUNICATIONS

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§ 110.01 DEFINITION.

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

YARD SALES, GARAGE SALES and BASEMENT SALES. The sale or offering for sale of more than five items by other than a licensed retail merchant, church, club or charitable institution of new and used merchandise, clothing, household goods or rummage in other than premises zoned for the sales.

(Ord. 154, passed 8-9-1995)

§ 110.02 CONDITIONS.

Yard sales, garage sales and basement sales shall not be permitted in the village, except under the following conditions.

(A) No sale shall be held until a license for the sale has been obtained from the Village Clerk on a form provided by the village. The license fee to be charged for the application is \$1.

(B) The sales shall only be conducted by the owner or occupant of the premises for the sale of goods owned by the owner or occupant.

(C) The sale shall be for a period not greater than three days.

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(D) (1) Signs advertising the sale may be posted on the premises where the sale is being conducted, or on a privately owned property, if written permission is obtained from the owner of the property where the sign is to be placed.

(2) Signs shall be removed at the closing or end of the last day of the sale and all sale goods removed from public view within 24 hours of last day of sale.

(E) The owner or occupant of the premises shall be limited to two sales per calendar year. (Ord. 154, passed 8-9-1995) Penalty, see § 110.99

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The sales shall not be operated in any number which would cause a nuisance or create a fire hazard.

(Ord. 154, passed 8-9-1995) Penalty, see § 110.99

§ 110.04 INSPECTIONS.

The Chief of Police or the Chief of the Fire Department or his or her representative shall make or cause to be made sufficient inspection to ensure the compliance with the provision of this chapter and other applicable provision of the village ordinances by the personnel conducting the sales.

(Ord. 154, passed 8-9-1995)

§ 110.05 NUISANCE PER SE.

The provisions of this chapter shall be enforceable through the bringing of appropriate action for injunction, mandamus, or otherwise, in any court having jurisdiction. Any violation of this chapter is deemed to be a nuisance per se.

(Ord. 154, passed 8-9-1995) Penalty, see § 110.99

§ 110.99 PENALTY.

Any person, firm or corporation convicted of violating any of the provisions of this chapter shall be guilty of a civil infraction and subjected to a fine not to exceed \$500, or imprisonment in the county jail for a period not to exceed 90 days, or both, in the discretion of the court, together with costs of prosecution.

(Ord. 154, passed 8-9-1995)

Section

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§ 111.01 PURPOSE.

A chapter 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 (Public Act 48 of 2002 or “Act”), being M.C.L.A. §§ 484.3101 to 484.3120, 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. 02-02, passed 10-9-2002)

§ 111.02 CONFLICT.

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

(Ord. 02-02, passed 10-9-2002)

§ 111.03 DEFINITIONS.

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

ACT. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act 48 of the Public Acts of 2002), as amended from time to time.

PERMIT. 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.

VILLAGE. The Village of Gaines.

VILLAGE COUNCIL. The Village Council 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. The Village President or his or her designee.

(B) All other terms used in this chapter shall have the same meaning as defined or as provided in the Act, including without limitation the following.

AUTHORITY. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to § 3 of the Act.

MPSC. 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. An individual, corporation, partnership, association, governmental entity or any other legal entity.

PUBLIC RIGHT-OF-WAY. 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**. 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 § 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.

TELECOMMUNICATIONS PROVIDER, PROVIDER and **TELECOMMUNICATIONS SERVICES**. Those terms as defined in § 102 of the Michigan Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 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 § 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 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:

- (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; and
 - (c) A person providing broadband internet transport access service.
- (Ord. 02-02, passed 10-9-2002)

§ 111.04 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 § 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 § 6(5) of the Act.

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(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, Public Act 442 of 1976, being M.C.L.A. §§ 15.231 to 15.246, pursuant to § 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 not otherwise covered by the Metro Act.

(E) *Additional information.* The Village President may request an applicant to submit additional information which the Village President deems reasonably necessary or relevant. The applicant shall comply with all requests in compliance with reasonable deadlines for 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 § 6(2) of the Act.

(F) *Previously issued permits.* Pursuant to § 5(1) of the Act, authorizations or permits previously issued by the village under § 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 484.2251, and authorizations or permits issued by the village to telecommunications providers prior to the 1995 enactment of § 251 of the State Telecommunications Act, but after 1985, shall satisfy the permit requirements of this chapter.

(G) *Existing providers.* Pursuant to § 5(3) of the Act, within 180 days from 11-1-2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the village as of a date that has not previously obtained authorization or a permit under § 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 484.2251, shall submit to the village an application for a permit in accordance with the requirements of this chapter. Pursuant to § 5(3) of the Act, a telecommunications provider submitting an application under this division (G) is not required to pay the \$500 application fee required under division (D) above. A provider under this division (G) shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in § 5(4) of the Act.
(Ord. 02-02, passed 10-9-2002)

§ 111.05 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 § 15(3) of the Act, the Village President shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under § 111.04(B) of this chapter for access to a public right-of-way within the

village. Pursuant to § 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 §§ 6(1), 6(2) and 15 of the Act.

(C) *Conditions.* Pursuant to § 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 § 15(3) of the Act, and without limitation on division (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.

(Ord. 02-02, passed 10-9-2002)

§ 111.06 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 state law or applicable codes, as amended, for construction within the public rights-of-way. No fee shall be charged for a construction or engineering permit.

(Ord. 02-02, passed 10-9-2002)

§ 111.07 CONDUIT OR UTILITY POLES.

Pursuant to § 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. 02-02, passed 10-9-2002)

§ 111.08 ROUTE MAPS.

Pursuant to § 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 and/or electronic format unless and until the MPSC determines otherwise, in accordance with § 6(8) of the Act.
(Ord. 02-02, passed 10-9-2002)

§ 111.09 REPAIR OF DAMAGE.

Pursuant to § 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. 02-02, passed 10-9-2002)

§ 111.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

In addition to the non-refundable application fee paid to the village set forth in § 111.04(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 § 8 of the Act.
(Ord. 02-02, passed 10-9-2002)

§ 111.11 MODIFICATION OF EXISTING FEES.

In compliance with the requirements of § 13(1) of the Act, the village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after 11-1-2002, 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 § 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 § 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 § 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, the 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. 02-02, passed 10-9-2002)

§ 111.12 SAVINGS CLAUSE.

Pursuant to § 13(5) of the Act, if § 8 of the Act is found to be invalid or unconstitutional, the modification of fees under § 111.11 above shall be void from the date the modification was made. (Ord. 02-02, passed 10-9-2002)

§ 111.13 USE OF FUNDS.

Pursuant to § 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 Public Act 51 of 1951, being M.C.L.A. §§ 247.651 to 247.675. (Ord. 02-02, passed 10-9-2002)

§ 111.14 ANNUAL REPORT.

Pursuant to § 10(5) of the Act, the Village President shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority. (Ord. 02-02, passed 10-9-2002)

§ 111.15 CABLE TELEVISION OPERATORS.

Pursuant to § 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 11-1-2002, 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. 02-02, passed 10-9-2002)

§ 111.16 EXISTING RIGHTS.

Pursuant to § 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. 02-02, passed 10-9-2002)

§ 111.17 COMPLIANCE.

(A) 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 a manner as to achieve that purpose.

(B) The village shall comply in all respects with the requirements of the Act, including, but not limited to, the following:

(1) Exempting certain route maps from the Freedom of Information Act, Public Act 442 of 1976, being M.C.L.A. §§ 15.231 to 15.246, as provided in § 111.04(C) of this chapter;

(2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 111.04(F) of this chapter;

(3) Allowing existing providers additional time in which to submit an application for a permit, and excusing the providers from the \$500 application fee not otherwise covered by the Metro Act, in accordance with § 111.04(G) of this chapter;

(4) Approving or denying an application for a permit within 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 § 111.05(A) of this chapter;

(5) Notifying the MPSC when the village has granted or denied a permit in accordance with § 111.05(A) of this chapter;

(6) Not unreasonably denying an application for a permit in accordance with § 111.05(A) of this chapter;

(7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 111.05(B) of this chapter;

(8) 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 § 111.05(C) of this chapter;

(9) 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 § 111.05(D) of this chapter;

(10) Not charging any telecommunications provider any additional fees for construction or engineering permits, in accordance with § 111.06 of this chapter;

(11) Providing each telecommunications provider affected by the village's right-of-way fees with a copy of this chapter, in accordance with § 111.11 of this chapter;

(12) Submitting an annual report to the Authority, in accordance with § 111.14 of this chapter; and

(13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 111.15 of this chapter.
(Ord. 02-02, passed 10-9-2002)

§ 111.18 RESERVATION OF POLICE POWERS.

Pursuant to § 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. 02-02, passed 10-9-2002)

§ 111.19 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 Chapter Violations Bureau) for violations under this chapter as provided by the Village Code.
(Ord. 02-02, passed 10-9-2002)

§ 111.99 PENALTY.

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 a fine of up to \$500 and/or imprisonment for a period not to exceed 90 days. 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. 02-02, passed 10-9-2002)

