

Charter Township of Orion

Ordinance No. 122

Right-of-Way Management

Adopted January 3, 2000

AMENDED

November 3, 2003

AN ORDINANCE TO AMEND AND SUPERSEDE ORDINANCE NO. 91, TO REGULATE AND MANAGE THE DISRUPTION TO AND USE OF THE TOWNSHIP'S RIGHTS-OF-WAY, EASEMENTS AND/OR PUBLIC PLACES BY THOSE PERSONS AND/OR ENTITIES SEEKING TO UNDERTAKE ANY ACTIVITY THAT DISRUPTS THE TOWNSHIP'S RIGHTS-OF-WAY, EASEMENTS AND PUBLIC PLACES AND/OR THOSE PERSONS AND/OR ENTITIES SEEKING TO USE AND/OR OCCUPY THE TOWNSHIP'S RIGHTS-OF-WAY, EASEMENTS AND PUBLIC PLACES.

ARTICLE I - GENERAL

Section 1 - Short Title

This Ordinance shall be known and may be cited as the "Township of Orion Right-of-Way Management Ordinance."

Section 2 - Purpose / Legislative Findings

1. Pursuant to Section 29 of Article 7 of the Michigan Constitution of 1963, and other applicable State and Federal legislation, including MCL 247.183, the Township of Orion has the authority to exercise reasonable control over its highways, streets, alleys and public places. The Township of Orion finds that, in the furtherance of control and to ensure and protect the public health, safety and welfare, it is appropriate for the Township to monitor, review and approve requests by persons and other entities seeking to disrupt and/or use and/or occupy the Township's rights-of-way, easements and public places.
2. This Ordinance is further intended to minimize the disruption, disturbance and/or damage to the Township's rights-of-way, easements and public places, and also to exercise reasonable control over, and monitor the use of the same, as well as to maintain aesthetic quality, and property values by requiring those parties or entities who seek to disrupt the Township's rights-of-way, easements and public places, and those parties who seek to use the Township's rights-of-way, easements and/or public places by constructing, installing, locating, operating, using and/or maintaining improvements, including telecommunications, gas and/or electric transmission systems therein, to obtain a disruption permit and/or a use permit and pay fair and reasonable permit fees.
3. The Township further finds that requiring the payment of permit fees will assist in protecting the Township's interests in its rights-of-way, easements and public places by allowing the Township to cover the fixed and variable costs of maintaining, monitoring, and ensuring quality control with regard to its rights-of-way, easements and/or public places.
4. Beneficiaries. This Ordinance is intended to benefit the Township and the public as a whole, and not to benefit any individual person. Accordingly, no person shall be a beneficiary of this Ordinance, and no person shall have the right to rely upon the fact of issuance or non-issuance of a permit for any purpose, or upon the Township's actions or inactions in the administration of this Ordinance.
5. This Ordinance, as amended, is further intended 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 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. *(added 11.03.03)*

Section 3 - Definitions

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them as follows:

- 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. *(added 11.03.03)*
- B. **Appliance** means any sanitary or storm sewer, main, pipe, catch basin or any other structure or instrumentality used for the accumulation or transportation of water, sewage runoff, sewage, liquid or gas.

- C. **Authority** means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act. *(added 11.03.03)*
- D. **Township Public Right-of-Way, Township Right-of-Way or Public Right-of-Way** means any and all public rights-of-way, streets, highways, roads, sidewalks, alleys, thoroughfares, public easements and public places within the Township, including, but not limited to, rights-of-way, public easements and public places within and/or under the jurisdiction of the Township, as well as the curbs, shoulders, landscaped areas and/or other areas incidental and/or appurtenant thereto. "Township public right-of-way" shall not include federal and state highways for purposes of telecommunication permit applications. *(amended 11.03.03)*
- E. **Conduit** shall include any overhead or underground cable, wire and/or a combination thereof, for the transmission of electrical energy, telephone service, telecommunications services and/or the transmission of other signals, including service connections and any other item protecting said cable or wire, and other appurtenant devices used in connection therewith.
- F. **Disruption** means a physical change, modification, alteration, disturbance, injury and/or damage to the Township's rights-of-way, including, but not limited to, construction, installation, location, maintenance, modification, alteration, replacement, and/or repair of improvements in the Township's rights-of-way.
- G. **Disruption Permit** means a non-exclusive limited permit issued by the Township to a person and/or entity, pursuant to the terms and provisions of this Ordinance for the purpose of allowing a person and/or entity to undertake an activity which will result in disruption to the Township's rights-of-way.
- H. **Electric Transmission** shall mean and include the transmission and/or distribution of electricity for sale to persons or entities intending to further transmit and/or distribute, or to persons or entities who are end users.
- I. **Franchise** means a non-exclusive limited authorization to transact, conduct and/or operate a use in the Township, including, but not limited to, the operation or use of improvements in the Township's right-of-way, which authorization has been awarded by the Township to the grantee by an Ordinance. *(added 11.03.03)*
- J. **Franchise Disruption** means disruption that is necessary to a Grantee satisfying or complying with its obligations or rights under a Franchise and which is performed by the Grantee or an authorized contractor whose authority is disclosed in writing to the Township in advance of the disruption. *(added 11.03.03)*
- K. **Grantee** means the holder of a valid and effective franchise granted by the Township.
- L. **Improvement** shall mean any appliance, conduit, facility, pipe, pole, structure, wire, cable, fiber, building, and/or any other man-made object and/or item, including, but not limited to, telecommunications system facility, gas and/or electric transmission facility, and/or other facility.
- M. **Minor Disruption** means disruption in connection with work or an improvement on an individual lot or parcel that: (1) will not extend beyond the property's right-of-way frontage, (2) will not result in any obstruction or interference with the traveled portion of the right-of-way, (3) as determined by the Township, will not have any impact on existing or planned Township utilities or other existing or permitted improvements in the right-of-way, and (4) as determined by the Township, is not of sufficient size or consequence and has no other aspects or components that warrant or necessitate compliance with otherwise applicable disruption permit requirements. *(added 11.03.03)*
- N. **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. *(added 11.03.03)*
- O. **Ordinances** means all laws, codes and regulations duly enacted and adopted by the Township of Orion.
- P. **Permittee** means a person who has been issued a disruption and/or a use permit pursuant to the terms and provisions of this Ordinance.
- Q. **Person** means a natural person, company, corporation, partnership, joint venture, voluntary association, organization or other legal entity.

- R. **Public Easement** shall mean any easement which has been granted by conveyance or law and/or dedicated to the Township and/or dedicated to public use, including, but not limited to, road and/or right-of-way easements, utility easements, water main and sewer line easements, access easements, drainage easements, recreational and/or conservation easements.
- S. **Public Place** shall mean any area owned, under the jurisdiction of, and/or controlled by the Township.
- T. **Street** means the paved or designated area for vehicular travel within the right-of-way, and the word **Street** shall be synonymous with the words **Highway** and/or **Road**.
- U. **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 CFR 20.3, and service provided by any wireless, two-way communication device. *(added 11.03.03)*
- V. **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, 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: *(added 11.03.03)*
- (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.
- W. **Telecommunications System** means a conduit, improvements, and/or items which are designed and/or used to provide telecommunications services.
- X. **Township** means the Charter Township of Orion, and unless this Ordinance or Resolution of the Township Board of Trustees indicates otherwise, means the Township Supervisor for purposes of applications and submissions to, and Township reviews, decisions or actions on all disruption and use permit issues and applications. *(added 11.03.03)*
- Y. **Use Permit** means a non-exclusive limited permit issued by the Township to a person pursuant to the terms and provisions of this Ordinance to allow persons to use and/or occupy the Township's rights-of-way for the purpose of operating and/or using an improvement therein, and includes a Use Permit described in Article III and a Telecommunications Permit described in Article IV.

All other terms used in this Ordinance shall have the same meaning as defined or as provided in the Act.

ARTICLE II - DISRUPTION PERMITS

Section 4 - Disruption Permit Required *(amended 11.03.03)*

1. **Generally.** Except as otherwise provided in this Ordinance, no person, including persons who have a use permit or may be exempt from the use permit requirements, shall direct or perform any activity which causes or results in any disruption to any Township right-of-way unless the consent of the Township is first obtained, as evidenced by a disruption permit issued by the Township pursuant to this Ordinance. Activity shall be performed in accordance with the disruption permit and in the manner provided for in this Ordinance.

2. Exceptions. A disruption permit is not required for (1) activities by or under contract with the Michigan Department of Transportation or Road Commission for Oakland County, (2) activities that have been disclosed and described to the extent required by this Ordinance and that are thereafter approved as part of a permit, site plan, plat or other approval under another Township Ordinance, (3) temporary obstructions which are incidental to the expeditious movement of articles and things to and from abutting premises, (4) the lawful operation and parking of vehicles within the part of the Township's right-of-way, or (5) the lawful and customary use of property by adjoining property owners for such things as landscaping and lawful repairs, maintenance and other activities of, for, or on a sidewalk, driveway or other similar improvement in the Township's right-of-way. In the event of a disruption emergency, including, but not limited to, a natural disaster, civil disturbance, flood and/or other severe weather condition, a person and/or a permittee may disrupt the Township's right-of-way without first receiving a disruption permit from the Township, provided that the Township Supervisor and/or their designee has approved the emergency disruption before it takes place.
3. Violation. Failure to obtain a disruption permit under this Section shall constitute a violation of this Ordinance and shall subject the violating person to the penalties provided for in this Ordinance. A person who violates this Section shall pay the required disruption permit fee, as well as an additional charge to be established by resolution of the Township Board for that period of time that the person did not have a valid disruption permit pursuant to this Ordinance.

Section 5 - Disruption and Use Permit Application Requirements and Procedures *(amended 11.03.03)*

1. Except as modified for Telecommunications Permits under Article IV, required Disruption and Use Permits shall be applied for as provided in this Section. Every applicant must complete and file four (4) copies of an application with the Township in a form designated or provided by the Township. A Grantee may apply for an annual disruption permit for all Franchise Disruptions in a calendar year, provided that the plans and other applicable information for each disruption are filed with the Township sufficiently in advance of the work that they may be reviewed.
2. At the time of filing an application, the applicant must pay to the Township a non-refundable application fee, with the amount of the application fee to be established by resolution of the Township Board. In addition, after the application has been reviewed by the Township, the applicant shall pay an application review and processing fee in an amount necessary to reimburse the Township for the costs in reviewing, processing, investigating, granting or denying, and issuing the permit, as estimated by the Township on rates and factors established by resolution of the Township Board. If review and processing costs exceed the Township's estimate, they shall be paid by the applicant prior to permit issuance.
3. Except for minor disruptions or where a waiver or modification has been requested by an applicant and approved by the Township, applications for permits shall include all of the information in Subsection 4 on or by attachment to an application form.
 - a. For disruptions the applicant believes are minor the application information can initially be limited to that required by Subsections 4 (a), (d), (h), (i) and (j) and a scaled drawing that shows the property and right-of-way lines and other information regarding the proposed disruption necessary for a Township determination of whether it is a minor disruption.
 - b. With the Township's approval, an applicant may rely on information submitted in connection with a specifically identified, previously issued permit, upon a written certification to the Township that the information has not changed and remains accurate.
 - c. Upon an applicant's written request and demonstration to the Township's satisfaction that one or more application requirements serve no useful purpose or have been adequately addressed in an alternative manner or form, the Township may waive or modify the requirements, with or without conditions.
4. Application Information Required.

Applicant Information.

- a. The name, age if an individual, and address of the applicant, and if the applicant is not a natural person, the date, state and form of business organization.

- b. The character of the business the applicant engages in and the lengths of time and locations where that business has been conducted.
- c. Written documentation of applicant's lawful existence, authorization and good standing to conduct its business in the State of Michigan.
- d. The names, phone numbers, fax numbers, addresses, E-mail addresses if applicable, and position, relationship or affiliation with applicant for the following persons:
 - (A) Applicant's contact person(s).
 - (B) The person(s) that is authorized to and will sign and agree to permits that are issued on behalf of applicant.
 - (C) Applicant's resident agent for service of process.
 - (D) The person(s) responsible for preparation and revisions of applicant's maps and plans.
 - (E) All contractors that will be performing any work in Township right-of-way for the applicant under the permit(s) requested.
 - (F) The construction and engineering personnel that will be responsible for supervision of disruption, maintenance and repair work in Township right-of-way and for communication with the Township regarding such work.

Plan and Work Information.

- e. On 8 ½" x 11" paper, a scaled drawing or map of the Township that shows or contains:
 - (A) The general route and location of improvements to be installed and/or used.
 - (B) The relationship of the improvements to existing and proposed improvements in adjoining municipalities.
 - (C) The length or other applicable measurement of Township right-of-way that will be used by applicant, expressed in lineal feet of aerial and underground portions of proposed and existing improvements.
- f. Detailed plans and a separate list or index of same, at a scale of not less than 1 inch = 100 feet for the improvements applicant proposes to construct and/or use, with each plan to clearly show or contain all of the following information:
 - (A) The name and address of the person that prepared the plan, the dates of preparation and revisions, a job/work title and/or number and a drawing/sheet number.
 - (B) Whether the improvements are existing or proposed.
 - (C) All Township right-of-way lines and property lines if within the Township right-of-way and the location of the improvements in relation thereto.
 - (D) The lineal feet or other area of Township right-of-way occupied or proposed to be occupied by the improvements shown on the plan, expressed separately for aerial and underground portions.
 - (E) Match lines by which each plan can be related to the applicant's other plans.
 - (F) A description of the improvements shown on the plan that includes the size, components, capacity, ownership and existing, proposed and potential uses.
 - (G) For aerial improvements, all existing and new poles or structures to which the improvements are or will be attached shall be shown and designated as such together with the owner of each such pole or structure.

- (H) For aerial improvements, elevations shall be depicted on a drawing that shows applicant's improvements in relation to all other existing improvements and the poles or structures to which they are or will be attached.
 - (I) For underground improvements, in addition to the applicant's, the plans shall show all other existing underground appliances, conduits and improvements, it being the applicant's responsibility to determine the existence and location of such other improvements. The plans shall show the applicant and other existing improvements by reference to the horizontal and vertical location and separation between improvements that exist or are proposed.
 - (J) The locations of rivers, streams, drains, bodies of water and State or Township regulated wetlands crossed by applicant's improvements.
 - (K) The location of all Township right-of-way that will or may be disrupted by the installation, use, maintenance or repair of applicant's improvements.
 - (L) The location of any above ground structures or landscaping including but not limited to, trees, shrubs, signs, hydrants, mail boxes and driveways within or adjoining the Township right-of way, that will or may be disrupted or damaged by the installation, use, maintenance or repair of the applicant's improvements.
- g. A description of the manner in which the improvements will be installed, maintained and repaired by reference to the number and types of vehicles, equipment and personnel involved and the area of Township right-of-way within which disruption activities will be occurring at any given time.

Work Schedule and Restoration Information.

- h. A description of the time and manner in which applicant will restore Township rights-of-way that may be disrupted or damaged by applicant's activities.
- i. The length of time it will take applicant to complete the installation and required restoration under a proposed disruption permit, expressed in terms of the number of weeks from the date the permit is issued, and noting any changes to the schedule that may be needed based on the time of year the permit is issued or any other variable that is not within applicant's control.

Miscellaneous Information and Documentation.

- j. Copies of Michigan Department of Transportation, Road Commission for Oakland County, and other governmental permits or approvals that are required for applicant's improvements, or documentation that such permits have been applied for.
- k. If applicant proposes to locate its improvements on, within or as part of poles, conduits or improvements of another person, that person's written confirmation of applicant's rights to do so.
- l. A detailed description of the services to be provided by applicant's improvements, which shall include a description of the system those improvements will be a part of and the categories or classifications and locations of existing, intended and potential customers or persons that are or may be served by the improvements.
- m. Notes on the plans requiring traffic control devices in accordance with Township ordinance, the most recent edition of the Michigan Manual of Uniform Traffic Control Devices Guide, and reasonable engineering specifications required by the Township.
- n. If the applicant is proposing to construct new aerial poles or new underground conduit or pipe improvements, a description of why it is not physically and financially feasible for applicant to utilize existing poles, pipes, conduits and improvements.

Additional Information.

The following information or details may be required by the Township on a case by case basis for reasons related to the proper and efficient administration of this Ordinance.

- o. Elevations on the plans with contours at maximum intervals of two feet, and other elevations as reasonably required by the Township.
 - p. Plans shall be at a scale not less than one inch equals 50 feet nor more than one inch equals 10 feet.
 - q. Topography on the plans showing existing features including but not limited to houses (with addresses shown), trees (four inch caliper and larger identified by size, species, and location), landscaping, mailboxes, driveways (with type of material noted), and other information within one hundred (100) feet of the proposed improvement or as reasonably required by the Township.
 - r. Plans shall show all property lines within one hundred (100) feet of the proposed improvement or as reasonably required by the Township.
 - s. Such other information as may be required for the Township to issue and establish individual terms and conditions for a permit.
5. **Complete Application Required.** An application shall not be considered as complete for any purposes, including the time periods in Subsection 6, until the application fee has been paid, and all the application information specified in Subsection 4, has been provided.
6. **Permit Decisions.** Except as otherwise provided in this Ordinance, the Township shall approve or deny a permit for issuance within forty-five (45) days from the date the applicant files a complete application. The Township shall not unreasonably deny an application for permit, and may approve a permit subject to conditions that must be satisfied prior to permit issuance and the commencement of permitted activities. The time limit for the Township to make a decision may be extended with the applicant's written agreement, and except for Telecommunications Permits under Article IV, by the Township for good cause.
7. **Permit Conditions and Bonds.** The Township may impose conditions on any permit it approves, which conditions shall be limited to the applicant's permitted activities and shall be necessary to ensure and protect the public health, safety and welfare. Subject to any limitations for Telecommunications Permits under Article IV, the Township may require, as a condition of the permit, that a bond in the form of cash or letter of credit be posted by the applicant, which bond shall not exceed the reasonable costs to ensure that the Township's rights-of-way that are to be disrupted and/or used by the applicant are returned and restored to their original condition after the applicant's disruption and/or use of the rights-of-way, and that as-built plans are submitted by the applicant and accepted by the Township.
8. **Permit Approval and Issuance.** Upon approving a permit for issuance, the Township shall provide the applicant with two copies of a completed permit form and documents that contain or incorporate all applicable terms and conditions under this Ordinance and any individual conditions imposed by the Township. To obtain permit issuance, the applicant shall accept and agree to the permit by signing both copies of the permit and applicable permit documents in the form and manner specified and delivering them to the Township together with any required fees, bonds, insurance certificates and any other documents that were specified by the Township as conditions for permit issuance. When all requirements for permit issuance have been satisfied, the Township shall issue the permit by dating and signing each of the permit forms, keeping one for Township records and mailing or delivering the second to the permittee.
9. **Appeals.** Any person, firm or corporation whose permit application is denied or approved with conditions the applicant wishes to challenge, may appeal to the Township Board of Trustees by filing a written appeal with the Township not more than ten (10) days after the decision. The application for appeal shall fully and particularly set forth the nature and grounds upon which the appeal is based. The Township Board, shall, within thirty (30) days after the filing of such notice of appeal, hold a hearing on the appeal. Upon hearing the appeal, Township Board shall either approve, conditionally approve or deny the permit for issuance, and in doing so, may in its sole discretion, on the applicant's request or its own motion, waive or modify ordinance requirements that were the basis for permit denial.
10. **Display of Permit.** A disruption permit or copy thereof, together with the approved plans shall be in the possession of the permittee's employee or representative at each work location at all times.
11. **Permit Amendments.** Disruption permit amendments are in the discretion of the Township, who for more than minor changes or alterations, may require that a new permit be applied for and obtained. Use permits may be amended by the

Township upon a written application of the permittee, to include additional right-of-way, with the rights to use the additional right-of-way being only for the remainder of the original use permit term. All application, application review and processing and annual use permit fees shall be paid in connection with such an amendment.

Section 6 - Disruption Permit Fee

In addition to the non-refundable application fee set forth in this Ordinance, and any other applicable fees for permits or approvals required by Township ordinances and/or other applicable laws, the permittee shall pay a disruption permit fee in an amount which will cover all of the Township's administrative costs, inspection costs, consulting costs, plan review costs, monitoring costs and all other costs incurred by the Township in conjunction with the permittee's disruption of the Township's right-of-way. At the time the Township issues the disruption permit to the permittee, the permittee shall immediately pay to the Township an estimated disruption permit fee in an amount that the Township has estimated that its administrative costs, inspection costs, consulting costs, plan review costs, monitoring costs and all other costs in conjunction with the disruption are likely to be, and upon completion of the disruption activities, the permittee shall pay to the Township any costs incurred in conjunction with the disruption activities that are over and above the amount paid to the Township by the permittee as estimated disruption permit costs. The Township shall reimburse to the permittee any excess funds over the amount incurred.

Section 7 - Disruption Permit Term and Extension *(amended 11.03.03)*

1. The disruption permit granted to the permittee by the Township shall be for a specified time period established by the Township, after taking into consideration the information in the permittee's disruption permit application.
2. Prior to the expiration of the term of the disruption permit, a permittee may apply in writing to the Township for an extension of the permit, which shall be granted by the Township if the permittee demonstrates a substantial hardship or legitimate reason for why the disruption activities could not be completed during the term initially established. Such a request shall be accompanied by any extension application fee that has been established by resolution of the Township Board. The Township shall have the right to impose conditions on a disruption permit extension.

Section 8 - Permit Terms and Conditions

1. Non-exclusive Permit. A disruption permit granted by the Township to a permittee shall be non-exclusive and shall not restrict or prevent the Township from at any time approving additional permits to other persons for the same Township rights-of-way, and the granting of a disruption permit does not establish any priority for the disruption or use of a Township right-of-way.
2. Compliance with Permit/Ordinances. A permittee shall strictly comply with all of the terms and conditions of a permit and shall comply with all applicable laws, codes, restrictions and ordinances, including the public utility notification provisions of Act 53 of the Public Acts of 1974, as amended, and the soil erosion and sedimentation control requirements of Act 347 of the Public Acts of 1972, as amended. *(amended 11.03.03)*
3. Building Permits/Other Permits and Approvals. In addition to the disruption permit required by this Ordinance, a permittee shall not commence construction on, across and/or under any Township right-of-way without first obtaining a building permit as required by the Township and paying the required building permit fees, and, further, a permittee shall not disrupt any Township right-of-way without first obtaining all other permits and approvals and paying all other applicable fees that are required by ordinance, code and/or statute.
4. Transfer/Assignment. A disruption permit is not assignable or transferable. *(amended 11.03.03)*
5. As-Built Plans. A permittee shall submit to the Township as-built plans for any improvements constructed and installed during the permitted disruption of the Township's right-of-way within sixty (60) days after completion of the same.
6. G.I.S. If requested by the Township, a permittee shall within sixty (60) days provide the Township with a Geographical Information System layer, in a media form acceptable to the Township which accurately portrays the permittee's as-built improvements which were constructed and installed in the Township's right-of-way during the permittee's disruption of the right-of-way.

7. Additional Future Use. The issuance of a disruption permit to a permittee does not confer to the permittee the rights to any additional uses of the Township's rights-of-way, except for those uses specifically granted and described in the disruption permit.
8. Township Future Use. The issuance of a disruption permit to a permittee does not prohibit the Township from using the Township's right-of-way in a manner which may interfere with the permittee's disruption activities, and the permittee acknowledges and accepts this risk and shall not be entitled to receive any compensation from the Township, in the event that the Township uses the Township right-of-way in the aforementioned manner. The expense of making any necessary modifications of its improvements in order to accommodate a conflict shall be borne by the permittee.

Section 9 - Permittee's Disruption of Township Right-of-Way

1. No Interference in Township Right-of-Way. A permittee shall not disrupt the Township's right-of-way in such a manner that it would interfere with the Township and/or other permittees' and/or grantees' use of said Township right-of-way, and/or interfere with existing water mains, gas lines, sanitary sewer lines, drains and/or drainage pipes, and/or other improvements that are existing in the Township's right-of-way. Any portion of the permittee's improvements that interfere with the Township's, and/or other permittees' and/or grantees' use of the Township's right-of-way or interfere with existing water mains, gas lines, drains and/or drainage pipes and/or other improvements, shall, at the request of the Township, be removed and/or modified by the permittee at the permittee's own cost, and the permittee shall not be entitled to receive any compensation from the Township for removal and/or modification of the same. Such removal or modification shall be made within a reasonable time of request, as stated in a written notice from the Township. If the removal or modification is not made within such time, the Township may remove or modify the interfering improvement(s) to the extent required, and bill the permittee for the expenses incurred in doing so. With regard to interferences with the use of the right-of-way for pedestrian, vehicular or other related purposes, all activities of a permittee shall be undertaken in a manner to minimize interference, and all due precautions shall be taken to maximize public safety.
2. Disruption Costs. The permittee's disruption of the Township's right-of-way shall conform to and be in compliance in all respects with the disruption plans submitted to and approved by the Township, and all permits issued to the permittee by the Township. All costs associated with the permittee's disruption of the Township's right-of-way shall be the sole responsibility of the permittee and shall be borne entirely by the permittee. All disruption activities performed by the permittee and its contractors, including the construction and installation of any improvements, shall be promptly done by the permittee and its contractors in compliance with the schedule submitted to and approved by the Township and in a good and workmanlike fashion in accordance with recognized construction industry standards and other applicable industry standards and subject to the required inspections of the Township and also subject to the final approval of the Township. The permittee's disruption activities in the Township's right-of-way shall not commence until such time as permittee has obtained all required building permits and other permits and approvals, has paid all applicable fees, and has received approval of its plans and specifications for said construction.
3. Restoration of Property. The permittee shall, as soon as is reasonably possible, restore, at permittee's sole cost and expense, any portion of the Township's right-of-way that is disrupted by the permittee. The disrupted right-of-way shall be restored and returned to a condition that is as good as that which existed at the time the disruption occurred. The time period and the manner in which the restoration is to take place by the permittee shall be established by the Township, and, in the event that the permittee does not complete the restoration in the time period specified by the Township and/or does not undertake the restoration in the manner approved by the Township, the Township may, upon written notice to the permittee, complete the repair and restoration and apply the bond posted by the permittee with the Township toward the Township's cost of restoration and repair. In the event the bond does not cover all of the costs incurred by the Township, the permittee shall immediately pay the outstanding balance of the costs to the Township, and shall be liable to the Township for the same until paid.
4. Personnel and Equipment Identification. Personnel, including contractors, of permittee conducting permitted activities shall at all times wear or have clearly visible identification as a representative of permittee, and all vehicles and equipment used in the activities shall be clearly identified with permittee's name. *(amended 11.03.03)*
5. Notice of Commencement and Completion of Permitted Activities. At least forty eight (48) hours prior to commencing or performing activities allowed by a permit, the permittee shall notify the Township by providing a description of the location, anticipated time and personnel, vehicles and equipment that will be involved. Within five (5) days of

completing all permitted activities, permittee shall notify the Township so that final inspection may be made. *(added 11.03.03)*

6. Traffic Control. The permittee shall furnish, install and maintain all necessary traffic controls and protection during disruption activities in accordance with the current edition of the Michigan Manual of Uniform Traffic Control Devices and any special conditions of the permit. *(added 11.03.03)*
7. Private Property. A permit does not authorize entry upon private property or the use of private water supplies. *(added 11.03.03)*

Section 10 - Indemnification

1. The Township, and its officers, employees, agents, representatives and contractors, shall not be liable and/or responsible for any damages and/or injuries that occur to and/or are suffered by any person, property and/or other item which is caused by or results from the permittee's and/or its contractor's disruption of the Township's rights-of-way or other related actions or omissions. Permittees shall defend, indemnify, protect, and hold harmless the Township, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses, including attorney fees, of any nature ("claims") arising out of or resulting from the acts or omissions of permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the permittee's use of or installation of improvements in the Public Right-of-Way and only to the extent of the fault or responsibility of permittee, its officers, agents, employees, contractors, successors and assigns. Township shall notify permittees of claims and the method and means proposed by Township for defending or satisfying such claim. Township shall cooperate and consult permittees in the defense and satisfaction of claims, including the selection and direction of legal counsel. Township shall not settle any claim subject to indemnification under this Section without the advance written consent of the permittee, which shall not be unreasonably withheld, with permittees, at their expense, having the right to defend or settle any claim against the Township for which permittee is responsible. *(amended 11.03.03)*
2. The permittee also agrees to indemnify and hold the Township and its officers, employees, agents, representatives harmless from any claims or other encumbrances which may be imposed as a result of any indebtedness or amounts owing by the permittee to any contractors, subcontractors and/or any other persons providing services, labor, materials and/or other items to the permittee. In the event that the Township discovers that such a claim and/or encumbrance has been placed on and/or against the Township's right-of-way, the Township shall notify the permittee in writing of the existence of said claim and/or encumbrance, and the permittee shall remove the same within thirty (30) days from said notice, and failure to remove such a claim is grounds for revocation of the permittee's permit. In the event that the permittee fails to remove the claim and/or encumbrance from the Township's right-of-way within thirty (30) days from the Township's written notice to the permittee of the existence of said lien and/or encumbrance, the Township may apply the bond posted by the permittee with the Township towards the Township's cost of completely removing the claim and/or encumbrance against the Township's right-of-way. The permittee shall have the affirmative obligation to inform the Township of any claims and/or encumbrances that the permittee is aware have been placed on and/or against the Township's right-of-way.

Section 11 - Insurance

The permittee shall, at its own cost, maintain, in full force and effect during the entire term of its disruption permit, the following kinds of insurance with the limits set forth, with said insurance and the company to be providing the same to be approved first by the Township:

1. Comprehensive. Comprehensive general liability insurance, with liability limits in an amount to be established by resolution of the Township Board, which liability insurance coverage shall include, but not be limited to, coverage for operational liability, products liability, contractors' liability, subcontractors' liability and shall also contain the coverage commonly referred to as "XCU" coverage.
2. Automobile. Automobile liability insurance covering any and all vehicles owned, leased and/or used by the permittee, its employees, agents, representatives, contractors and/or subcontractors, with said insurance to comply in all respects with Michigan no-fault statutes, and to have personal protection and property protection insurance and liability limits in amounts to be established by resolution of the Township Board.

3. Additional Insured. The Township and its officers, employees, agents, contractors and representatives shall be named as additional insureds on the comprehensive general liability insurance and the automobile liability insurance to be obtained by permittee.
4. Proof of Insurance/Cancellation. The permittee shall furnish to the Township certificates of insurance and certified copies of each insurance policy that the permittee is required by this Section to obtain. No insurance policy and coverage that the permittee is required to obtain and keep in full force and effect by this Section shall be cancelled and/or changed and/or be subject to cancellation or reduction during the entire period of the construction without the prior written consent and approval of the Township, and the insurance policy and/or coverage shall contain express language prohibiting termination or cancellation without thirty (30) days advance notice to the Township. In the event that the permittee changes and/or cancels the insurance required by this Section prior to the expiration of the permittee's disruption permit without the written consent and/or approval of the Township, said cancellation and/or change may, at the Township's sole discretion, be grounds for revocation of the permittee's disruption permit by the Township pursuant to this Ordinance.

Section 12 - Revocation of Permit

In addition to any other rights and/or remedies that the Township may have, pursuant to this Ordinance and any other applicable law, which rights and/or remedies the Township may pursue in its sole discretion, the Township, if it finds the existence of an imminent threat to the public health, safety or welfare, may order a stoppage of work and/or use, pending a hearing before the Township Board; and/or, the Township Board may revoke a permit for any of the following reasons, subject to undertaking the revocation procedure in the next section (*amended 11.03.03*):

1. Permittee's violation of and/or non-compliance with this Ordinance.
2. Permittee's failure to comply with any of the standards, conditions and/or requirements of its disruption permit, including, but not limited to, failure to perform its disruption activities in the Township's right-of-way in compliance with the permit, building permit and any and all construction and other plans submitted to and approved by the Township.
3. Permittee's failure to obtain permits and other approvals and to timely pay any fees required by this Ordinance and/or any other applicable ordinances, codes, statutes or laws.
4. Violation of any ordinance, code, State law, and/or any other applicable law and/or legal requirement.
5. The permittee's change to and/or cancellation of the insurance policies and coverages required by this Ordinance without the prior written approval and consent of the Township.
6. The cessation of operation, termination, dissolution and/or disbanding of the permittee.
7. Causing and/or maintaining a nuisance, as determined by the Township, in the Township's right-of-way.
8. Failure to timely pay to the Township any real property taxes, personal property taxes, assessments and/or other obligations.
9. Failure to remove any liens or encumbrances from the Township's right-of-way.
10. A change of circumstance relating to the right-of-way which results in a materially adverse condition in which to allow a continuation of permittee's use.

Section 13 - Revocation Procedure

In the event the Township issues a stop work or use order or determines that a permit is subject to revocation under this Ordinance, the Township shall do the following prior to the formal revocation of the permittee's disruption permit (*amended 11.03.03*):

1. Mail or deliver a written Notice of Hearing to the permittee at least ten (10) days prior to the hearing, containing the following information:

- a. Notice of the Township's proposed action.
 - b. Reasons for the Township's proposed action.
 - c. Date, time and location of hearing.
 - d. A statement that, at the hearing, the permittee may present witnesses, evidence, information and arguments on its behalf, and that the permittee has the right to be represented by counsel.
2. Hold a hearing as scheduled. The permittee shall be given an opportunity to be represented by counsel and to present witnesses, evidence, information and arguments. Other interested persons shall also be permitted to attend the hearing and may present information and comments on the matters addressed at the hearing.
 3. Following the public hearing, the Township Board shall make a decision to continue, modify or dissolve a stop work or use order and/or to revoke a permit, as applicable. In the event the Township Board decides to revoke a permit the Township Board shall state the reasons for its revocation on the record and shall mail or deliver a written copy of its action to the permittee. *(amended 11.03.03)*

Section 14 - No Waiver

Nothing in this Ordinance shall be construed as a waiver of any of the rights, remedies and/or authority of the Township pursuant to any laws, ordinances, codes or regulations of the Township, and the Township reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, Township ordinance, code and/or regulation. Nothing in this Ordinance shall be construed to limit and/or preclude the Township from exercising its right of eminent domain.

ARTICLE III - USE PERMITS

Section 15 - Use Permit Required

1. Except as otherwise provided in this Ordinance, no person shall use and/or occupy the Township's right-of-way for the purpose of using and/or operating any improvements within said right-of-way unless a use permit has first been applied for and issued by the Township pursuant to this Ordinance. For purposes of this Ordinance, a person providing local exchange service or other local telecommunications services shall be considered to be using the Township's right-of-way, if such person is the owner of the improvement or obtains the use of the improvement from another party under a lease, contract, interconnection or other similar arrangement.
2. Failure to obtain a use permit under this Section shall constitute a violation of this Ordinance and shall subject the violating person to the penalties provided for in this Ordinance, and a person who violates this Section shall pay the required use permit fee, as well as an additional charge to be established by resolution of the Township Board for that period of time that the person did not have a valid use permit pursuant to this Ordinance.

Section 16 - Exemption *(amended 11.03.03)*

An exemption described in this Section shall not apply until it has been documented and proven in written form by the person claiming it to the Township's satisfaction. A use permit is not required for any person that has a valid, effective and current franchise from the Township to use the Township's rights-of-way for improvements.

Section 17 - Permit Application Procedures *(amended 11.03.03)*

1. Except as modified for Telecommunications Permits under Article IV and as otherwise provided in this Article, the Permit Application Requirements and Procedures in Section 5 shall apply to use permits. Applications to use and/or occupy Township public right-of-way for improvements that extend beyond the right-of-way frontage of real property owned by the user of the proposed improvements, shall be approved, approved with conditions or denied for issuance by the Township Board.

2. Complete applications requiring Township Board decision shall be scheduled for the first regular Township Board meeting that allows the Township to provide at least ten (10) days written notice to the applicant of the location, day and time of that meeting, at which the applicant and other interested persons will have the right to present evidence, information, comments, statements and questions regarding, in support of or in opposition to the application.

Section 18 - Use Permit Fee *(amended 11.03.03)*

Except for Telecommunications Permits under Article IV, in addition to the non-refundable application fee, application review and processing fees, and any other applicable fees for permits or approvals required by other Township ordinances and applicable laws, for each year the use permit is in effect, the permittee shall pay an annual use permit fee to the Township in an amount established by resolution of the Township Board. The annual use permit fee shall be paid prior to use permit issuance, and for each year thereafter, on or before the last Township business day prior to January 1, said fee being payable in advance of the year it is for.

The amount of the use permit fee shall be fair and reasonable, competitively neutral, nondiscriminatory, reasonably related to the Township's costs in connection with the permit and Township right-of-way involved and shall not be in excess of what is authorized by applicable laws. Upon the written request of the Township or applicant, the fees established by the Township Board resolutions shall be reviewed on a case-by-case basis for the purpose of determining whether the fee should be more or less. In making such determination, the Township Board shall take into consideration the following factors:

1. The fixed and variable costs to the Township in maintaining the right-of-way in, under or over which the permittee's use occurs.
2. The total amount of area that the permittee will be using and occupying in the Township right-of-way, including, but not limited to, the length of right-of-way, and the number and size of the improvements to be used.
3. The frequency and unit cost of monitoring the rights-of-way on a regular basis to ensure that the use by permittee conforms with applicable law, ordinance and permit conditions, and that such use has not created the need for public attention.
4. The proportionate cost of maintaining and administering records, including computer records, of right-of-way use, including administration to assist in the avoidance of conflicts in the use of the rights-of-way by other users, and auditing of the extent of permittee's use.
5. Any unique aspects of permittee's use or improvements that are likely to affect the cost to the Township of permittee's use of the rights-of-way.

Section 19 - Use Permit Term and Renewal *(amended 11.03.03)*

Except for Telecommunications Permits under Article IV, a use permit shall be issued for a term of ten years, with the first year ending on December 31st of the year the use permit is issued. The permittee may apply to the Township for ten-year renewals of its use permit, which renewal periods would run from January 1st to December 31st of each ten (10) year term. Unless earlier terminated by the permittee or the Township, a permittee must file an application for renewal of its use permit with the Township not less than one hundred twenty (120) days before the expiration of the current term, and pay a renewal application fee to the Township in an amount established by resolution of the Township Board. The Township shall review all renewal applications, and not later than December 1st of each year, shall approve or deny all renewal applications. Decisions on renewal applications shall be made by the Township in the same manner as the original permit. The Township shall have the right to impose additional reasonable conditions on those use permit renewals.

Although permits are to be granted for a ten (10) year term, the Township may conduct an interim review at the end of the third and sixth years of a permit. The review shall first determine whether the fee schedule then in effect should be revised. If the Township determines that it should be revised, a resolution shall be presented to the Township Board for a new fee, which upon Township Board approval, shall be established and shall be effective for the balance of the permit term. The second purpose of the review shall be to require the permittee to demonstrate all of the following:

1. The permittee has complied with all use permit terms and conditions.

2. The permittee has timely paid to the Township the annual use permit fees, all personal and real property taxes and any other obligations due and payable to the Township.
3. The permittee's performance has been in compliance with this Ordinance relative to specific issues presented to the permittee in advance of the review by the Township Board.

If, at such review, the permittee fails to make the demonstration specified above, the Township may impose further conditions upon the continuation of the use permit, or, if the failure represents a material breach of the terms and intent of this Ordinance, may initiate revocation proceedings.

Section 20 - Use Permit Terms and Conditions

1. Non-exclusive Use Permit Rights. A use permit granted by the Township to a permittee shall be non-exclusive and shall not restrict or prevent the Township from at any time approving additional permits to other persons to use and/or occupy the same Township rights-of-way, and the granting of a use permit does not establish any priority for the use and/or occupancy of Township right-of-way.
2. Compliance with Permit/Ordinances. A permittee shall strictly comply with all of the terms and conditions of a permit and shall comply with all applicable laws, codes, restrictions and ordinances, including the public utility notification provisions of Act 53 of the Public Acts of 1974, as amended, and Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended. *(amended 11.03.03)*
3. Permits and Approvals. In addition to the use permit required by this Ordinance, a permittee shall not commence construction on, across and/or under any Township right-of-way without first obtaining disruption and building permits as required by the Township and paying the required building permit fees, and, further, a permittee shall not use and/or occupy any Township right-of-way for the purpose of using and/or operating any improvement therein not included within a valid ordinance or use permit(s) without first obtaining all other permits and approvals and paying all other applicable fees that are required by ordinance, code and/or statute.
4. Transfer/Assignment. Prior to completion of the construction of the improvements in the Township public rights-of-way covered by a use permit, there shall not be any transfer, conveyance or assignment of the permit or the rights/privileges granted by it or any change in control of permittee, in whole or in part, voluntarily, involuntarily, or by operation of law, merger, consolidation, substantial change in the ownership or control or other means, without prior written consent of the Township, which shall not be unreasonably withheld for reasons unrelated to the ability and/or willingness of the proposed transferee/assignee to comply with the permit and all of its terms and conditions. After the completion of such construction, such a conveyance, transfer, assignment or change in control may be done without Township consent provided that permittee provides written notice to the Township of same no later than thirty (30) days after such occurrence and provided that: *(amended 11.03.03)*
 - a. Any transferee or assignee shall be qualified to perform under the permit terms and conditions and comply with applicable law, shall be subject to the obligations of the permit, including responsibility for any defaults which occurred prior to the transfer or assignment, shall supply the Township with written notice of the same identification, address and contact information required of a permittee and shall comply with any updated insurance and performance bond requirements under the permit which the Township reasonably deems necessary, and
 - b. A change in control shall not be to an entity lacking the qualifications to assure permittee's ability to perform under the terms and conditions of the permit and comply with applicable law and shall be subject to compliance with any updated insurance and performance bond requirements which the Township reasonably deems necessary.

A security interest in a permit, the rights/privileges thereunder or improvements covered by the permit may be granted at any time without notice to the Township.
5. As-Built Plans. A permittee shall submit to the Township as-built plans for the construction, installation, location, maintenance, use and/or operation of its improvements which are in the Township right-of-way within sixty (60) days after completion of the same.
6. G.I.S. If requested by the Township, a permittee shall within sixty (60) days provide the Township with a Geographical Information System layer in a media form acceptable to the Township which accurately portrays the permittee's as-built

improvements, and the permittee shall update said layer to accurately reflect any changes to the same which are approved by the Township.

7. Additional and/or Future Use. The issuance of a use permit to a permittee does not confer to the permittee the rights to any additional uses of the Township's right-of-way, except for those uses specifically granted and described in the use permit.
8. Township Future Use. The issuance of a use permit to a permittee does not prohibit the Township from using the Township's right-of-way in a manner which may interfere with, disrupt and/or prevent the permittee's use and/or occupancy of the same, and the permittee acknowledges and accepts this risk and shall not be entitled to receive any compensation from the Township in the event that the Township uses the Township right-of-way in the aforementioned manner. The expense of making any necessary modifications of its improvements in order to accommodate a conflict shall be borne by the permittee.

Section 21 - Permittee's Use and Occupancy of Township Right-of-Way

1. No Interference in Township Right-of-Way. A permittee shall not construct, install, locate, maintain, use and/or operate its improvements in the Township's right-of-way in such a manner which would interfere with the Township and/or other permittees' and/or grantees' use of said Township right-of-way, and/or interfere with existing water mains, gas lines, sanitary sewer lines, drains and/or drainage pipes, and other improvements that are existing in the Township's right-of-way. Any portion of the permittee's improvements that interfere with the Township's, and/or other permittees' and/or grantees' use of the Township's right-of-way or interfere with existing water mains, gas lines, drains and/or drainage pipes and/or other improvements, shall, at the request of the Township, be removed and/or modified by the permittee at the permittee's own cost, and the permittee shall not be entitled to receive any compensation from the Township for removal and/or modification of the same. Such removal or modification shall be made within a reasonable time of request, as stated in a written notice from the Township. If the removal or modification is not made within such time, the Township may remove or modify the interfering improvement(s) to the extent required, and bill the permittee for the expenses incurred in doing so. With regard to interferences with the use of the right-of-way for pedestrian, vehicular or other related purposes, all activities of a permittee shall be undertaken in a manner to minimize interference, and all due precautions shall be taken to maximize public safety.
2. Construction, Installation, Use and Occupancy Costs. The construction, installation and location by the permittee of its improvements in the Township's right-of-way, and the permittee's use and/or occupancy of the Township's right-of-way, shall conform to and be in compliance in all respects with the construction/building plans, and the operation and use plans submitted to and approved by the Township, and all permits issued to the permittee by the Township. All costs of the permittee's construction, installation, maintenance, use and/or operation of its improvements in the Township's right-of-way, and all of the costs of the permittee's use and occupancy of the right-of-way shall be the sole responsibility of the permittee and shall be borne entirely by the permittee. All construction and installation of the improvements in the Township's right-of-way, as well as the permittee's use and/or occupancy of the right-of-way, shall be performed by the permittee in compliance with the schedule submitted to and approved by the Township Board and shall be done in a good and workmanlike fashion, in accordance with recognized construction industry standards and other applicable industry standards and subject to the required inspection of the Township and also subject to the final approval of the Township. The construction and installation of the permittee's improvements in the Township's right-of-way, and its use and occupancy thereof, shall not commence until such time as permittee has obtained all required building permits and other permits and approvals, has paid all applicable fees and has received all required approvals of its plans and specifications.
3. Restoration of Property. The permittee shall, as soon as reasonably possible, restore, at permittee's sole cost and expense, any portion of the Township's right-of-way that is disrupted by the construction, installation, location, maintenance, use and/or operation of its improvements. The disrupted rights-of-way shall be restored and returned to a condition that is as good as that which existed at the time the disruption occurred. The time period and the manner in which the restoration is to take place by the permittee shall be established by the Township, and, in the event that the permittee does not complete the restoration in the time period specified by the Township and/or does not undertake the restoration in the manner approved by the Township, the Township may, upon written notice to the permittee, complete the repair and restoration and apply the bond posted by the permittee with the Township toward the Township's cost of said restoration and repair. In the event that the bond does not cover all of the costs incurred by the Township, the permittee shall immediately pay the outstanding balance of the costs to the Township, and shall be liable to the Township for the same until paid.

4. Maintenance and Repair. During the term of the use permit, the permittee shall, at its sole expense and cost, maintain and repair the permittee's improvements, and if, at anytime during the term of the use permit, the permittee fails to maintain and/or repair the improvement to the satisfaction of the Township, the Township shall send a written notice to the permittee advising the permittee that the permittee has fourteen (14) days to correct and/or maintain the defective condition, and if the defective condition is not corrected within fourteen (14) days, the Township shall be entitled, at its sole discretion, to draw upon the bond posted by the permittee and perform said maintenance and repair, correct the defect and/or remove the improvement, and bill the cost of the same to the permittee for any excess amounts, which the permittee shall pay to the Township within thirty (30) days of the date of billing, or the Township may declare the permittee in default of its use permit and revoke the permittee's use permit as provided in this Ordinance.
5. Removal and/or Relocation. A permittee shall, at its own cost and expense, remove, relocate and/or disconnect any portion of its improvements located in the Township's right-of-way when the permittee is advised in writing by the Township that removal, relocation and/or disconnection of the same is necessary for the Township to undertake and complete any construction, excavation, maintenance, repair and/or any other work in the Township right-of-way, and/or when said removal, relocation and/or disconnection is necessary for the Township to undertake any activity which is in the furtherance of the public health, safety and welfare. The Township may remove, relocate, damage, disrupt and/or disconnect the permittee's improvements in the event of an emergency, including, but not limited to, a war, disaster, fire and/or severe weather occurrence if the same is determined to be necessary by the Township's Supervisor and/or his or her duly appointed designees, with the Township not being liable to the permittee and/or any persons receiving the permittee's services for any damages or injuries caused by the removal, relocation, damage and/or disconnection.
6. Vacation/Abandonment. If a right-of-way is vacated, discontinued, abandoned, terminated and/or released, the permittee's right to use and/or occupy the Township right-of-way shall immediately terminate, and the permittee shall, at its own cost, remove its improvements therefrom.
7. Expiration or Termination of Use Permit. At the expiration and/or termination of the permittee's use permit, and/or in the event that the permittee abandons and/or ceases operating and/or using its improvements in the Township's right-of-way, the permittee shall, at its own cost and expense, and within a time period established by the Township, remove all of its improvements from the Township's right-of-way, and shall, at its own cost, restore and return the area to the condition that existed prior to the construction, installation, location, maintenance, use and/or operation of its improvements in the Township right-of-way. In the event the permittee and the Township both agree that it would not be in the best interest of the public health, safety and welfare for the permittee to remove its improvements from the Township right-of-way, the permittee shall convey and give the improvements to the Township, at no cost to the Township, and the Township shall become the owner of the improvements in the Township's right-of-way, and the Township shall be permitted to use the same in any manner that the Township sees fit. The decision as to whether a permittee shall remove its improvements from the Township's right-of-way is in the sole discretion of the Township.
8. Co-Location. To the extent possible, but only with the prior written permission of the Township, a permittee shall, if physically and financially feasible, utilize existing improvements to construct or install its improvements. The determination of physical and financial feasibility shall be determined at the discretion of the Township Board. An applicant shall have the burden of demonstrating that use of an existing facility is unfeasible.
9. Personnel and Equipment Identification. Personnel, including contractors, of permittee conducting permitted activities shall at all times wear or have clearly visible identification as a representative of permittee, and all vehicles and equipment used in the activities shall be clearly identified with permittee's name. *(amended 11.03.03)*
10. Notice of Commencement and Completion of Permitted Activities. At least forty eight (48) hours prior to commencing or performing activities allowed by a permit, the permittee shall notify the Township by providing a description of the location, anticipated time and personnel, vehicles and equipment that will be involved. Within five (5) days of completing all permitted activities, permittee shall notify the Township so that final inspection may be made. *(added 11.03.03)*
11. Traffic Control. The permittee shall furnish, install and maintain all necessary traffic controls and protection during disruption activities in accordance with the current edition of the Michigan Manual of Uniform Traffic Control Devices and any special conditions of the permit. *(added 11.03.03)*
12. Private Property. A permit does not authorize entry upon or use of private property. *(added 11.03.03)*

Section 22 - Indemnification

1. The Township and its officers, employees, agents, representatives and contractors shall not be liable and/or responsible for any damages and/or injuries that occur to and/or are suffered by any person, property and/or other item which are caused by or results from the permittee's and/or its contractor's construction, installation, location and/or maintenance of its improvements in the Township's right-of-way and/or are caused by or result from the permittee's use and/or occupancy of the right-of-way. Permittees shall defend, indemnify, protect, and hold harmless the Township, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses, including attorney fees, of any nature ("claims") arising out of or resulting from the acts or omissions of permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the permittee's use of or installation of improvements in the Public Right-of-Way and only to the extent of the fault or responsibility of permittee, its officers, agents, employees, contractors, successors and assigns. Township shall notify permittees of claims and the method and means proposed by Township for defending or satisfying such claim. Township shall cooperate and consult permittees in the defense and satisfaction of claims, including the selection and direction of legal counsel. Township shall not settle any claim subject to indemnification under this Section without the advance written consent of the permittee, which shall not be unreasonably withheld, with permittees, at their expense, having the right to defend or settle any claim against the Township for which permittee is responsible. *(amended 11.03.03)*
2. The permittee also agrees to indemnify and hold the Township and its officers, employees, agents, representatives and contractors harmless from any claims and/or any other encumbrances which may be imposed as a result of any indebtedness or amounts owing by the permittee to any contractors, subcontractors and/or any other persons providing services, labor, materials and/or other items to the permittee. In the event that the Township discovers that such a claim and/or encumbrance has been placed on and/or against Township right-of-way, easement and/or public place, the Township shall notify the permittee in writing of the same within thirty (30) days from said notice, and failure to remove such a claim is grounds for revocation of the permittee's permit. In the event that the permittee fails to remove the claim and/or encumbrance from the Township's right-of-way within thirty (30) days from the Township's written notice to the permittee of the existence of said claim and/or encumbrance, the Township may apply the bond posted by the permittee with the Township towards the Township's cost of completely removing the claim and/or encumbrance against the Township's right-of-way. The permittee shall have the affirmative obligation to inform the Township of any claims and/or encumbrances that the permittee is aware have been placed on and/or against the Township's right-of-way.

Section 23 - Insurance

The permittee shall, at its own cost, maintain in full force and effect during the valid term of its use permit the following kinds of insurance with the limits set forth, with said insurance and the company to be providing the same to be approved first by the Township:

1. Comprehensive. Comprehensive general liability insurance, with liability limits in an amount to be established by resolution of the Township Board, which liability insurance coverage shall include, but not be limited to, coverage for operational liability, products liability, contractors' liability, subcontractors' liability and shall also contain the coverage commonly referred to as "XCU" coverage.
2. Automobile. Automobile liability insurance covering any and all vehicles owned, leased and/or used by the permittee, its employees, agents, representatives, contractors and/or subcontractors, with said insurance to comply in all respects with Michigan no-fault statutes, and to have personal protection and property protection insurance and liability limits in amounts to be established by resolution of the Township Board.
3. Additional Insured. The Township and its officers, employees, agents, contractors and representatives shall be named as additional insureds on the comprehensive general liability insurance and the automobile liability insurance to be obtained by permittee.
4. Proof of Insurance/Cancellation. The permittee shall furnish to the Township certificates of insurance and certified copies of each insurance policy that the permittee is required by this Section to obtain. No insurance policy and coverage that the permittee is required to obtain and keep in full force and effect by this Section shall be cancelled and/or changed and/or be subject to cancellation or reduction during the entire period of the construction without the prior written consent and approval of the Township, and the insurance policy and/or coverage shall contain express language

Revised 11/06/03

prohibiting termination or cancellation without thirty (30) days advance notice to the Township. In the event that the permittee changes and/or cancels the insurance required by this Section prior to the expiration of the permittee's use permit without the written consent and/or approval of the Township, said cancellation and/or change may, at the Township's sole discretion, be grounds for revocation of the permittee's use permit by the Township pursuant to this Ordinance.

Section 24 - Revocation of Permit *(amended 11.03.03)*

Use permits may be revoked or the subject of stop use orders for the same reasons and based on the same standards as provided in Section 12.

Section 25 - Revocation Procedure *(amended 11.03.03)*

Use permits and the procedures for revocation and decisions on stop use orders are the same as provided in Section 13.

Section 26 - No Waiver

Nothing in this Ordinance shall be construed as a waiver of any of the rights, remedies and/or authority of the Township, pursuant to any laws, ordinances, codes or regulations of the Township, and the Township reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, Township ordinance, code and/or regulation. Nothing in this Ordinance shall be construed to limit and/or preclude the Township from exercising its right of eminent domain.

ARTICLE IV - TELECOMMUNICATIONS PERMITS *(added 11.03.03)***Section 27 - Permit Required**

1. **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 Telecommunications Permit, which is a form of Use Permit, pursuant to this Article.
2. **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 by filing three (3) copies with the Township Supervisor. Upon receipt, the Township Supervisor shall make and distribute copies of the application to other Township staff and consultants as necessary. 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.
3. **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.
4. **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 Five Hundred Dollars (\$500).
5. **Additional Information.** The Township may request an applicant to submit such additional information required for use permit applications under Section 5, which the Township 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 Township. 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.
6. **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.

7. Existing Providers. A telecommunications provider with facilities located in a public right-of-way in the Township that as of November 1, 2002, the effective date of the Act, 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 Article and within the time required or extended under Sections 5(3) and 5(4) of the Act. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the Five Hundred Dollar (\$500) application fee required under Subsection 4 above.

Section 28 - Issuance of Permit

1. Approval or Denial. The Township, as defined in Section 3, shall have the authority to approve or deny an application for a permit. Pursuant to Section 15(3) of the Act, the Township 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 27 for access to a public right-of-way within the Township. Pursuant to Section 6(6) of the Act, the Township shall notify the MPSC when the Township 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 Township shall not unreasonably deny an application for a permit.
2. Form of Permit. If an application for permit is approved, the Township 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.
3. Conditions. Pursuant to Section 15(4) of the Act, the Township 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.
4. Bond Requirement. Pursuant to Section 15(3) of the Act, and without limitation on Subsection (3) above, the Township 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 29 - Disruption 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 disruption permit as required under Article II. Notwithstanding any provisions of that Article to the contrary, no fees may be charged for such a construction permit.

Section 30 - 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.

Section 31 - Route Maps

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within ninety (90) days after the substantial completion of construction of new telecommunications facilities in the Township, submit route maps to the MPSC and Township, showing the location of the telecommunications facilities. The route maps shall be in the format (electronic, paper or otherwise) as finally determined by the MPSC (or a court of competent jurisdiction) in accordance with Section 6(8) of the Act.

Section 32 - 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.

Section 33 - Establishment and Payment of Maintenance Fee

In addition to the non-refundable application fee paid to the Township set forth in Section 27, 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.

Section 34 - 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 telecommunication 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. 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 refunded as having been charged in error.

Section 35 - Savings Clause Under the Act

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 34, shall be void from the date the modification was made.

Section 36 - Use of Funds

Pursuant to Section 10(4) of the Act, all amounts received by the Township from the Authority shall be used by the Township solely for rights-of-way related purposes.

Section 37 - Annual Report

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

Section 38 - 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.

Section 39 - Existing Rights and Permits

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. Upon the written request of a telecommunications provider holding such a permit, the Township shall issue a replacement permit in the form approved by the MPSC in accordance with Sections 6(1), 6(2) and 15 of the Act, with the Effective Date of the replacement permit to be the same date as the original permit.

Section 40 - Compliance

The Township 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 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 to 15.246, as provided in the Act and in Section 27.

- b. Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 27.
- c. Allowing existing providers to submit applications for permits within the times and excusing such providers from the Five Hundred Dollar (\$500) application fee, in accordance with Section 27.
- 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 Township, in accordance with Section 28.
- e. Notifying the MPSC when the Township has granted or denied a permit, in accordance with Section 28.
- f. Not unreasonably denying an application for a permit, in accordance with Section 28.
- g. Issuing permits in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 28.
- 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 28.
- 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 28.
- j. Not charging any telecommunications providers any additional fees for disruption permits, in accordance with Section 29.
- k. Providing each telecommunications provider affected by the Township's right-of-way fees with a copy of this Ordinance or a resolution confirming the modification of existing fees provided for in Section 34.
- l. Submitting an annual report to the Authority, in accordance with Section 37.
- m. Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 38.

Section 41 - Reservation of Police Powers

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

ARTICLE V - MISCELLANEOUS

Section 42 - Violations / Penalties

1. Municipal Civil Infraction/Payment of Fine. Any person, firm, or corporation violating a provision of this Ordinance, upon an admission or a finding of responsibility for such violation, shall be deemed responsible for a municipal civil infraction, and shall pay a civil fine as prescribed in the schedule set forth in Section 9 of Ordinance No. 109, as amended, and shall further be subject to the equitable jurisdiction of the Court.
2. Costs. A person, firm, or corporation ordered to pay a fine under Paragraph (1) shall be ordered by the District Court Judge or Magistrate to pay costs, which costs may include all expenses, direct and indirect, to which the Township of Orion has been put in connection with the violation of this Ordinance up to the entry of the Court's judgment or order to pay fine and costs.
3. Additional Writs and Orders. A person who admits or is found responsible for violation of this Ordinance shall comply with any order, writ, or judgment issued by the District Court to enforce this Ordinance.

4. Default on Payment of Fines and Costs. A default in payment of a civil fine, costs, or damages or expenses ordered under Paragraph (1) or (2) or an installment of the fine, costs, or damages or expenses as allowed by the Court, may be collected by the Township of Orion by a means authorized for the enforcement of a judgment.
5. Failure to Comply with Judgment or Order. If a defendant fails to comply with an order or judgment issued pursuant to this Section within the time prescribed by the Court, the Court may proceed under Paragraph (7).
6. Failure to Appear in Court. A defendant who fails to answer a citation or notice to appear in Court for a violation of this Ordinance is guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500) plus costs and/or imprisonment not to exceed ninety (90) days.
7. Civil Contempt. If a defendant defaults in the payment of a civil fine, costs, or other damages or expenses, or an installment as ordered by the District Court, upon motion of the Township of Orion or upon its own motion, the Court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.
 - a. If a corporation or an association is ordered to pay a civil fine, costs, or damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this subsection.
 - b. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the Court or to a failure on their part to make a good faith effort to obtain the funds required for payment, the Court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
 - c. If it appears that the default in the payment of a fine, costs, or damages or expenses does not constitute civil contempt, the Court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine, costs, or damages or expenses.
 - d. The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall be specified in the order of commitment and shall not exceed one day for each Thirty Dollars (\$30) due. A person committed for nonpayment of a civil fine, costs, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of Thirty Dollars (\$30) per day.
 - e. A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall not be discharged from custody until one of the following occurs:
 - i. Defendant is credited with an amount due pursuant to Subparagraph 7(d), above.
 - ii. The amount due is collected through execution of process or otherwise.
 - iii. The amount due is satisfied pursuant to a combination of subdivisions (i) and (ii) of this subparagraph.

Section 43 - Notices

Any notices required to be sent to the permittee by this Ordinance may be delivered, or may be sent by first-class mail to the permittee at the address listed in the permittee's disruption and/or use permit application, and any notices required to be sent to the Township may be delivered or forwarded to the Township by first-class mail addressed to: Township Clerk, at the Township offices.

Section 44 - Underground Installation

Except those improvements that are permitted by the Township to be co-located, or that must be established on or above the surface of the ground, and except to the limited extent that an applicant/permittee is exempted by law from this requirement, all installations of improvements shall be underground. It shall be the burden of the applicant/permittee to establish that an exception applies.

Section 45 - Repeal

All ordinances inconsistent with this Ordinance, including Ordinance No. 91, shall be repealed and replaced by this Ordinance, provided all such repealed ordinances shall be saved with respect to those matters on which claims and prosecutions by the Township have been commenced, and shall continue into effect until such claims and prosecutions shall be completed.

Section 46 - Effective Date

This Ordinance shall be published in a newspaper of general circulation in the Township of Orion, and shall become effective upon publication, as provided by law.

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