

## Chapter 106

### TELECOMMUNICATIONS

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[HISTORY: Adopted by the Village Council of the Village of Bellaire 3-12-2003 by Ord. No. 6-2003. Amendments noted where applicable.]

#### § 106-1. Purpose.

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the Village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

#### § 106-2. Conflict.

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

#### § 106-3. Terms defined.

A. The terms used in this chapter shall have the following meanings:

ACT — The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

VILLAGE — the Village of Bellaire.

VILLAGE COUNCIL — The Village Council of the Village of Bellaire or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

VILLAGE CLERK — The Village Clerk or his or her designee.

VILLAGE PRESIDENT — the duly elected or appointed President of the Village of Bellaire or his or her designee.

PERMIT — a nonexclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the Village for its telecommunications facilities.

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

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

MPSC — the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.

PERSON — an individual, corporation, partnership, association, governmental entity, or any other legal entity.

PUBLIC RIGHT-OF-WAY — the area on, below or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

TELECOMMUNICATIONS FACILITIES or FACILITIES — The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunications services or signals. Telecommunications facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of Part I of Title III of the Communications Act of 1934, Ordinance 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

TELECOMMUNICATIONS PROVIDER, PROVIDER and TELECOMMUNICATIONS SERVICES — Those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunications provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of Part I of the Communications Act of 1934, Ordinance 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 CFR

20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this chapter only, a provider also includes any of the following:

- (1) A cable television operator that provides a telecommunications service.
- (2) Except as otherwise provided by the Act, a person who owns telecommunications facilities located within a public right-of-way.
- (3) A person providing broadband Internet transport access service.

**§ 106-4. Permit required.**

- A. Permit required. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the Village for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.
- B. Application. Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, one copy with the Village President, and one copy with the Village Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.
- C. Confidential information. If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.
- D. Application fee. Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.
- E. Additional information. The Village Council may request an applicant to submit such additional information which the Village Council deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village Council. If the Village and the applicant cannot agree on the requirement of additional information requested by the Village, the Village or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.
- F. Previously issued permits. Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the Village under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the Village to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.

- G. Existing providers. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the Village as of such date that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 shall submit to the Village an application for a permit in accordance with the requirements of this chapter. 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 application fee required under Subsection D above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

**§ 106-5. Issuance of permit.**

- A. Approval or denial. The authority to approve or deny an application for a permit is hereby delegated to the Village Council. Pursuant to Section 15(3) of the Act, the Village Council shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under § 106-4B of this chapter for access to a public right-of-way within the Village. Pursuant to Section 6(6) of the Act, the Village Clerk shall notify the MPSC when the Village Council has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village Council shall not unreasonably deny an application for a permit.
- B. Form of permit. If an application for permit is approved, the Village Clerk shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.
- C. Conditions. Pursuant to Section 15(4) of the Act, the Village Council may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.
- D. Bond requirement. Pursuant to Section 15(3) of the Act, and without limitation on Subsection C above, the Village Council may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

**§ 106-6. Construction/engineering permit.**

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

**§ 106-7. Conduit or utility poles.**

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

**§ 106-8. Route maps.**

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the Village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the Village. The route maps should be in paper format unless and until the Commission determines otherwise, in accordance with Section 6(8) of the Act.

**§ 106-9. Repair of damage.**

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the Village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

**§ 106-10. Establishment and payment of maintenance fee.**

In addition to the nonrefundable application fee paid to the Village set forth in § 106-4D above, a telecommunications provider with telecommunications facilities in the Village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

**§ 106-11. Modification of existing fees.**

In compliance with the requirements of Section 13(1) of the Act, the Village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the Village also hereby approves modification of the fees of providers with telecommunications facilities in public rights-of-way within the Village's boundaries so that those providers pay only those fees required under Section 8 of the Act. The Village shall provide each telecommunications provider affected by the fee with a copy of this chapter, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the Village's policy and intent, and upon application by a provider or discovery by the Village, shall be promptly refunded as having been charged in error.

**§ 106-12. Savings clause.**

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under § 106-11 above shall be void from the date modification was made.

**§ 106-13. Use of funds.**

Pursuant to Section 9(4) of the Act, all amounts received by the Village from the Authority shall be used by the Village solely for rights-of-way-related purposes. In conformance with that requirement, all funds received by the Village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the Village under Act No. 51 of the Public Acts of 1951.

**§ 106-14. Annual report.**

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

**§ 106-15. Cable television operators.**

Pursuant to Section 13(6) of the Act, the Village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband Internet transport access services.

**§ 106-16. Existing rights.**

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this chapter shall not affect any existing rights that a telecommunications provider or the Village may have under a permit issued by the Village or under a contract between the Village and a telecommunications provider related to the use of the public rights-of-way.

**§ 106-17. Compliance.**

The Village hereby declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the Act, and the provisions of this chapter should be construed in such a manner as to achieve that purpose.

**§ 106-18. Reservation of police powers.**

Pursuant to Section 15(2) of the Act, this chapter shall not limit the Village's right to review and approve a telecommunications provider's access to and ongoing use of a public right-of-way or limit the Village's authority to ensure and protect the health, safety and welfare of the public.

**§ 106-19. Authorized Village officials.**

The Village President or his or her designee is hereby designated as the authorized Village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal ordinance violations bureau) for violations under this chapter.

**§ 106-20. Penalties.**

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than \$500. Each day this chapter is violated shall be considered as a separate violation. Nothing in this section shall be construed to limit the remedies available to the Village in the event of a violation by a person of this chapter or a permit.