

Chapter 36

TELECOMMUNICATIONS*

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***State law references**—Michigan telecommunications act, MCL 484.2101 et seq.; metropolitan extension telecommunications right-of-way oversight act, MCL 484.3101 et seq.; Michigan broadband development authority act, MCL 484.3201 et seq.

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ARTICLE I. IN GENERAL

Secs. 36-1—36-18. Reserved.

ARTICLE II. CABLE TELEVISION

Sec. 36-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Available means that trunk lines, amplifiers, and related equipment are installed and capable of providing basic service to every block containing five or more separate occupancies, as defined in the state construction code, upon payment of the fees and charges specified in any franchise granted hereunder.

Basic service means the simultaneous delivery by the grantee to the television, radio, or other appropriate communications receiver of a subscriber of all signals of over-the-air broadcasters required by the Federal Communications Commission or by this article to be carried by the CATV system of the grantee, together with such additional public, educational, governmental, leased, or other access channels or signals as may be likewise required by law, but not including pay or subscription television as defined by the Federal Communications Commission.

Block means and includes all property fronting on both sides of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of cul-de-sac, or city boundary.

CATV or cable television system means a system employing antennae, microwave, wires, waveguides, coaxial cables, or other conductors, equipment or facilities, designed, constructed or used for the purpose of:

- (1) Collecting and amplifying local or distant broadcast television or radio signals and distributing and transmitting same;
- (2) Transmitting original cablecast programming not received through television broadcast signals;

- (3) Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that any of the services, permitted hereunder to be performed, as described above, shall be those performed by the grantee for subscribers, as herein defined, in the operation of a cable television or CATV system franchised by the city and not otherwise; provided, further, that such term shall not include any such facility or system that serves only the residents of one or more apartment dwellings or commercial establishments under common ownership, control or management.

Director means the city manager of the city or his designee.

FCC means the United States Federal Communication Commission.

Franchise means and includes any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a cable television system within all or a specified area in the city.

Franchise area means the territory within the city throughout which the grantee shall be authorized hereunder to construct, maintain, and operate its system and shall include any enlargements thereof and additions thereto.

Grantee means any person, firm or corporation receiving the grant of any franchise hereunder and shall include any lawful successor to the interest of such person, firm or corporation.

Manager means the city manager or his designee.

Program means and includes any sign, signal, picture, image, or sound of any kind, or any combination thereof.

Subscriber or user means any person or entity receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television

broadcast, radio signals, the grantee's original cablecasting and the local government, education and public access channels; and other services such as leasing of channels, data and facsimile transmission, pay television, and police, fire and similar public service communication. (Code 1972, § 12.262; Ord. No. 133, § 1.02, eff. 11-2-1980)

Sec. 36-20. Nonexclusive franchise to install and operate CATV.

(a) A nonexclusive franchise to install, construct, operate, and maintain a cable television system on streets within all or a specific portion of the city may be granted by the council to any person, whether operating under an existing franchise, or not, who offers to furnish and provide such system under and pursuant to the terms and provisions of this article. No provision of this article may be deemed or construed to require the granting of a franchise when in the opinion of the council it is in the public interest to restrict the number of grantees to one or more, and competitive franchises covering the same territory shall be restricted to those instances where the applicant for the second franchise can offer a unique or legally protected service which is not available and cannot be made available to the grantee of the existing franchise.

(b) When and in the event that the grantee of any franchise granted hereunder uses in his cable television system distribution channels furnished to the grantee by a telephone company pursuant to tariff or contract on file with a regulatory body having jurisdiction and said grantee makes no use of the streets independent of such telephone company-furnished facilities, said grantee shall be required to comply with all of the provisions hereof as a "licensee" and in such event whenever the term "grantee" is used herein it shall be deemed to mean and include "licensee." (Code 1972, § 12.271; Ord. No. 133, § 2.01, eff. 11-2-1980)

Sec. 36-21. Authority granted by franchise.

Any franchise granted pursuant to the provisions of this article shall authorize and permit the grantee to do the following:

- (1) Erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on,

over, under, across, and along any public street such poles, wire, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations, including, but not limited to, any public utility or other grantee of any franchise of this city;

- (2) Maintain and operate facilities and properties for the collection, transmission, conduction, amplification, conversion and distribution of programs and other services by use of electricity, radiation, or other energy source; and
- (3) Solicit, sell, distribute, and make a charge to subscribers within the city for connection to the CATV system of grantee.

(Code 1972, § 12.272; Ord. No. 133, § 2.02, eff. 11-2-1980)

Sec. 36-22. Application for franchise.

All applications to construct, operate, or maintain any CATV system in this city shall be filed with the city clerk, and each such application shall set forth, contain, or be accompanied by the following:

- (1) The name, address, and telephone number of the applicant;
- (2) A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
 - a. The names, residence addresses and business addresses of all officers, directors, and partners or business associates of the applicant;
 - b. The names, residence addresses and business addresses of all persons and entities having controlling, or being entitled to have or control five percent or more of the ownership of the

- applicant and the respective ownership share of each such person or entity;
- c. The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole or in part of owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all CATV or similar systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby;
 - d. A detailed description of all previous experience of the applicant in providing CATV service or related or similar services;
 - e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a responsible lending institution or funding source, addressed to both the applicant and the council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the city, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the city; and
 - f. A statement identifying, by place and date, any other cable television franchise awarded to the applicant, its parent or subsidiary; the status of said franchise with respect to completion thereof; the total cost of completion of such system; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;
- (3) A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:
 - a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;
 - b. A statement or schedule setting forth all proposed classifications or rates and charges to be made against subscribers and all rates and charges as to each of any said classifications, including installation charges, service charges, and special, extraordinary, or other charges. The purchase price, terms, and nature of any optional or required equipment, device, or other thing to be offered for sale to any subscriber shall be described and explained in detail; and
 - c. A detailed statement describing the actual equipment and operational standards proposed by the applicant.
 - (4) A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber;
 - (5) A detailed statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation which shall in any manner, directly or indirectly relate or pertain to or depend upon the application, or proposed franchise;
 - (6) A copy of any agreement covering the franchise area, if existing between the

applicant and any public utility, including, but not limited to, poles, lines or conduits;

- (7) Any other information pertinent to the subject matter of such application and requested by the manager; and
- (8) An application fee in the sum as currently established or as hereafter adopted by resolution of the city council from time to time which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, which shall not be returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying, investigating and otherwise processing the application.

(Code 1972, § 12.280; Ord. No. 133, § 3.01, eff. 11-2-1980)

Sec. 36-23. Franchise procedure.

(a) The council may, by advertisement or any other means, solicit and call for applications for CATV franchises, and may determine and fix the time for filing such applications.

(b) Upon receipt of any application for a franchise, in manner, time, and form as herein or otherwise provided, the city clerk shall forward and deliver the same to the manager.

(c) Upon receiving the same from the city clerk, as aforesaid, the manager shall cause such application to be investigated, shall prepare his report of such investigation, shall make his recommendations respecting such application, and shall cause said report and recommendations to be placed upon the agenda of a regular session of the council. A copy of such report and recommendations and notice of the date it will be presented to the council shall be mailed to the applicant at the address listed in the application or otherwise delivered to him. The clerk shall cause notice of such meeting to be published at least once in a newspaper of general circulation in the city, stating the hour, date and place of the meeting,

stating that the proposed franchise will be considered, and stating that comments from the public will be heard.

(d) The council shall receive the report and recommendations of the manager, shall consider the same together with such application, and comments of the public, and shall make its determination either that such application be accepted upon such terms and conditions as the council shall determine, or that such application be rejected. In making any determination as to any application, the council shall consider the quality of the service proposed, rates to subscribers, income to the city, experience, character and financial responsibility of the applicant and its management and owners, the technical and performance quality of the equipment to be used, the willingness and ability of the applicant to meet construction and physical requirements, policy conditions, franchise limitations, and requirements imposed by this article and any other considerations deemed pertinent by the council.

(e) If the council shall determine that such application shall be rejected, such determination shall be final and conclusive. If the council shall determine such application shall be accepted, the following shall be done:

- (1) The council shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided;
- (2) The council shall pass its resolution of intention to grant such franchise, stating the name of the proposed grantee, the character of the franchise, the terms and conditions upon which such franchise is proposed to be granted, fixing and setting forth a day, hour and, place certain when and where any persons having any interest therein or objection to the granting thereof may appear before the council and be heard, and directing the city clerk to publish said resolution at least once, within 15 days of the passage thereof; and
- (3) Within 15 days after the passage of said resolution, the city clerk shall cause the same to be published in a newspaper of general circulation within the city, and

the same shall be published at least ten days prior to the date specified for hearing thereon. Copies of such resolution shall be mailed to any person requesting same in writing.

(f) At the time set for such hearing, or at any adjournment thereof, the council shall proceed to hear and pass upon all protests, and its decision thereon shall be final and conclusive. Thereafter, the council shall make one of the following determinations:

- (1) That such franchise be defined;
- (2) That such franchise be granted upon the terms and conditions as specified in the resolution of intention to grant the same; or
- (3) That such franchise be granted, but upon the terms and conditions different from those specified in the resolution of intention to grant the same.

(g) If the council shall determine that such franchise be denied, such determination shall be by resolution and shall be final and conclusive. If the council shall determine that such franchise be granted, such determination shall be by ordinance, granting such franchise upon such terms and conditions as specified therein.
(Code 1972, § 12.291; Ord. No. 133, § 4.01, eff. 11-2-1980)

Sec. 36-24. Acceptance of franchise.

(a) No franchise hereunder shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the city clerk; and such written acceptance shall be in form and substance as shall be prescribed and approved by the city attorney and operate as an acceptance of each and every term and condition and limitation contained in this article, and in such franchise.

(b) Such written acceptance shall be filed by the grantee not later than the seventh day next following the effective date of the ordinance granting such franchise; and in default of the filing of

such written acceptance as herein required, the grantee shall be deemed to have rejected the same.

(Code 1972, § 12.292; Ord. No. 133, § 4.02, eff. 11-2-1980)

Sec. 36-25. Franchise requirements.

In addition to any other franchise requirements hereunder, or made or adopted as herein provided, the following requirements shall apply to any franchise granted or renewed by the council under this article.

- (1) *Franchise payments, operations within franchise area.* In consideration of the granting and exercise of a franchise to use the streets of the franchise area for the purpose of operating a cable television system for the use and benefit of subscribers therein, the grantee shall pay to the city during the entire life of the franchise, at such times and in such manner and amounts as specified in the ordinance granting the franchise.
- (2) *Franchise payments, operations outside franchise area.* In consideration of the granting and exercise of a franchise to use the streets of the franchise area solely for the purpose of providing cable television service to subscribers outside such franchise area, the grantee shall pay to the city during the entire life of the franchise, at such times and in such manner and amounts as specified in the ordinance granting such franchise, a franchise fee separate and distinct from that specified in subsection (1) of this section.
- (3) *Franchise payments not in lieu of taxes.* Any franchise payments to the city by the grantee shall not be in lieu of any occupation, income, license, or property tax or similar levy, assessment, fee, or charge which would otherwise apply to and be payable by the grantee.
- (4) *Corporate surety bond re city.* The franchise ordinance shall specify that upon acceptance of such franchise, the grantee shall file with the city clerk and shall thereafter during the entire term of such

franchise maintain in full force and effect a corporate surety bond or other adequate surety agreement in the amount and kind specified in the franchise ordinance and conditioned that in the event the grantee shall fail to comply with any one or more of the provisions of such franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or costs suffered or incurred by the city or by any subscriber as a result thereof, including attorney's fees and costs of any action, or proceeding, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred up to the full principal amount of such bond; and said condition shall be a continuing obligation during the entire term of such franchise and thereafter until the grantee shall have satisfied in full any and all obligations to the city and any subscriber which arise out of or pertain to said franchise. Neither the provisions of this section, nor any bond accepted by the city pursuant hereto, nor any damages recovered by the city thereunder shall be construed to excuse faithful performance by the grantee, or limit the liability of the grantee under any franchise issued pursuant to this ordinance.

- (5) *Comprehensive liability insurance.* Upon acceptance of such franchise the grantee shall file with the city clerk and shall thereafter during the entire term of such franchise maintain in full force and effect a single limit comprehensive liability policy of insurance with limits as currently established or as hereafter adopted by resolution of the city council from time to time, or such higher amounts as the council may fix in the ordinance granting the franchise or any amendment thereto, and of such insuring institutions, form, and substance as shall be approved by the manager, and which shall assure the grantee, and shall provide primary cover for the city, its officers, boards, commissions, agents, and employees against liability for loss or damage for personal

injury, death, and property damage occasioned by any activity or operation of the grantee under such franchise, and which shall contain and include a standard cross-liability endorsement thereto.

- (6) *Hold harmless agreement.* The grantee shall indemnify and hold harmless the city, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable television system), costs or liabilities (including costs or liabilities of the city with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damages to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee, or the granting thereof by the city.
- (7) *Defense of litigation.* The grantee shall at the sole risk and expense of the grantee, upon demand of the city, made by the manager or his designee, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, boards, commissions, agents or employees, and arising out of or pertaining

to the exercise or the enjoyment of such franchise, or the granting thereof by the city.

- (8) *Payment.* The grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against the grantee, the city, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither the grantee nor city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

(Code 1972, § 12.300; Ord. No. 133, § 5.01, eff. 11-2-1980)

Sec. 36-26. Construction and use of facilities.

(a) Within 30 days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduit of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems, or associated microwave transmission facilities. In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the grantee's cable television operations, shall also be submitted simultaneously to the manager.

(b) Within 90 days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, the grantee shall commence construction and installation of the cable television system.

(c) Within 180 days after the commencement of construction and installation of the system, the grantee shall complete construction of the facilities needed to permit the reception of broadcast signals and the origination of programming within the franchise area. The grantee shall further complete construction of sufficient cable distribution plant within one year of said commencement date to make basic service available to the franchise area; provided, however, that the council may approve exceptions to this standard upon a showing by the grantee of undue hardship or expense due to extensions of trunk lines of one mile or more to serve ten or fewer occupancies. Prior to commencement of construction of the distribution system, the grantee shall submit a construction schedule and map to the city showing in detail the franchise area to be wired during construction period, and shall construct the distribution system in accordance with such schedule as adopted or modified by the council.

(d) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for termination of such franchise. The ordinance granting the franchise shall contain a provision that by acceptance of the franchise, the grantee agrees that failure to comply with any time requirements referred to in subsections (a)—(c) of this section will result in damage to the city and that it is and will be impracticable to determine the actual amount of such damage in the event of delay; and the grantee therefore agrees that, in addition to any other damage suffered by city, he will pay to city the sum as currently established or as hereafter adopted by resolution of the city council from time to time per day for each and every day's delay beyond the time prescribed, for completion of any of the acts required to be done by this section.

(e) The grantee shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities without first securing the written approval of the director; provided, that the privilege of the grantee to construct, install, or replace any poles, conduits, or other facilities in, on, or over any

street shall at all times be subject to the right of the city in the exercise of its police power or pursuant to the terms hereof, upon reasonable notice to the grantee, to require any such conduits or other facilities of the grantee to be constructed, installed, placed, or replaced beneath the surface of the streets; and any construction, installation, placement, replacement or changes which may be so required shall be made at the expense of the grantee.

(f) The city shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other facilities erected, controlled, or maintained exclusively by or for the grantee in any street or other public way or public place; provided, such use by city does not interfere with the use by the grantee.

(g) The grantee shall at the expense of the grantee, protect, support, temporarily disconnect, or temporarily relocate any property of the grantee when, in the opinion of the director, the same is required by reason of freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal line, or movement of buildings.

(h) In the event the use of any part of the system of the grantee is discontinued for any reason for a continuous period of 30 days, without prior written notice to and approval by the manager, or in the event any part of such system has been installed in any street or other area without complying with the requirements hereof, or in the event any franchise shall be terminated, cancelled, or shall expire, the grantee shall, at the option of the city, and at the expense of the grantee and at no expense to the city, promptly remove from any street or other area all property of the grantee, and the grantee shall promptly restore the street or other area from which such property has been removed to such condition as the director shall approve; provided the city council may, upon written application therefor by the grantee, approve the abandonment of any of such property in place by the grantee and under such terms and conditions as the city council may prescribe; and upon abandonment of any such property in place, the grantee shall cause to be

executed, acknowledged, and delivered to the city such instruments as the city attorney shall prescribe and approve, conveying the ownership of such property to the city.

(i) Upon the failure, refusal or neglect of the grantee to cause any work or other act required by law or by this article to be completed in, on, over, or under any street within any time prescribed therefor, or upon notice given, where notice is prescribed, the manager may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to the grantee an itemized statement of the costs thereof, and the grantee shall, within 30 days after receipt of such statement, pay unto the city the entire amount thereof.

(j) Unless otherwise provided in any given instance, where any time is prescribed herein for the doing or causing to be done of any act, city council for good cause, stated in writing, may extend any time for two additional periods of not to exceed 90 days each. Further, the running of any time period specified herein shall be automatically tolled whenever and so long as the certificate of compliance issued by the FCC to the grantee is the subject of a petition for stay, petition for review, or appeal filed with any United States Court.

(Code 1972, § 12.310; Ord. No. 133, § 6.01, eff. 11-2-1980)

Sec. 36-27. Standards.

(a) *General rules.* A grantee receiving a franchise shall:

- (1) Be capable of relaying to subscriber terminals television and radio broadcast signals;
- (2) Be constructed with the potential of two-way digital signal transmission;
- (3) Distribute color television signals which it receives;
- (4) Provide at least one channel, without charge, for exclusive use of the city, and other governmental agencies;

(5) Provide at least one channel each for educational public access and civic or non-profit organization uses; and

(6) Have a minimum capacity of 15 channels.

(b) *Additional services.* The cable television system may also engage in the business of:

(1) Transmitting original cablecast programming not received through television broadcast signals;

(2) Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers; or

(3) Transmitting and receiving all other signals; digital, voice and audiovisual.

(c) *Refusal of service.* No person, firm or corporation within the service area of the grantee, and where trunk lines are in place, shall be refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or service charges.

(d) *Service standards.* The grantee shall:

(1) Correct malfunction promptly, but in no event later than 24 hours after occurrence;

(2) Answer complaints by subscribers;

(3) Planned interruptions of service, insofar as possible shall be preceded by notice given to subscribers 24 hours in advance and shall occur during periods of minimum use of the system;

(4) Maintain an office in the city, which office shall be open during all usual business hours, with its telephone listed in directories of the telephone company serving the city, which office shall be so operated that complaints and requests for repairs or adjustments may be received at any time, day or night, seven days a week; and provide notice to such office and the

grantee's complaint procedure to each subscriber at the time of initial subscription to the system;

(5) Maintain a written record, or log, listing the date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by the grantee in response thereto. Said record shall be kept at the grantee's local office, for a period of five years and shall be available for inspection during regular business hours, without further notice or demand, by the manager.

(e) *City complaint procedures.* The managers shall designate a city officer or employee who shall have the primary responsibility for the administration of complaints regarding cable television franchises, and shall adopt procedures to be followed by such officer or employee in resolving and processing such complaints.

(f) *Failure to provide service.* Any grantee of any franchise hereunder who shall, within two years after the payment of any installation charge by any subscriber, fail to operate its system or make its service available to such subscriber, on a regular and continuous basis, shall refund the installation charge, to such subscriber, together with interest thereon at not less than six percent per year.

(g) *Municipal service.* With respect to the local government channel, the grantee shall provide, at the request of the manager, and upon city reimbursement of the grantee's actual cost, use of the grantee's studio, equipment and technical services for production of live and videotape municipal programs, subject to scheduling requirements of the grantee.

(Code 1972, § 12.320; Ord. No. 133, § 7.01, eff. 11-2-1980)

Sec. 36-28. Franchise limitations.

In addition to any other franchise limitations hereunder or as herein provided, the following limitations shall apply to any franchise granted or renewed by the council under this article.

(1) *Nature of franchise.* Such franchise shall be nonexclusive, and neither the granting

thereof nor any of the provisions contained herein or in such franchise shall limit, abridge, diminish, alter, or affect the right, privilege, power, or authority of the city council; and the council hereby reserves and preserves the right to grant any identical or similar or different franchise to any person, firm, or corporation other than the grantee, either within or without or partly within or partly without the franchise area of any grantee, subject only to the restriction provided in section 36-20. No privilege or exemption shall be granted or conferred by any franchise granted hereunder except those specifically prescribed in this article.

(2) *Subordination of franchise privileges.* The grant of any privilege by any franchise hereunder shall be subordinate to any prior lawful occupancy of any street or public property or to the grant of any privilege under any other franchise of prior date, insofar as there shall be any conflict.

(3) *Transfer of franchise.*

a. Any franchise granted hereunder shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the city council and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the city clerk within 30 days after any such transfer or assignment. The said consent of the council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the council and must agree to comply

with all provisions of the franchise and of this article; provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed 50 percent of the market value of the property used by the franchisee in the conduct of the cable television system, prior consent of the council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

b. In the event that the grantee is a corporation, prior approval of the city council, expressed by resolution, shall be required where there is an actual change in control or where ownership of more than 50 percent of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom already own fifty percent or more of the voting stock, singly or collectively.

(4) *Term of franchise.* No franchise granted or renewed by the council under this article shall be for a term shorter than five years, unless terminated prior to its expiration as herein provided, nor shall any such franchise be granted or renewed for a term longer than 15 years. Any franchise renewal shall be subject to the prior approval of the council utilizing the same procedures as prescribed herein for the granting of a new franchise. Any franchise granted hereunder shall be revocable at the will of council.

(5) *Recourse against city.* The grantee shall have no recourse or remedy whatsoever against the city for any loss, cost, expense, or damage arising out of or with respect to any franchise hereunder, or this article, or the enforcement thereof.

(6) *City rules and regulations.* The grantee shall be subject to all ordinances, rules, regulations, and specifications of the city

heretofore or hereafter established, including but not limited to those pertaining to works and activities in, on, over, under and about streets.

(7) *Prohibited activities of the grantee.* The grantee shall be prohibited from directly or indirectly doing any of the following:

- a. Engaging in the business of selling at retail, leasing, renting, repairing or servicing of television sets or radios;
- b. Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by the grantee;
- c. Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose, without the consent of the subscriber;
- d. Entering or encroaching upon or interfering with or obstructing any private property without the express consent of the owner; and
- e. Providing any repair service to its subscribers for a fee, which repair extends beyond the connection of its service or the determination by the grantee of the quality of its signal to the recipients thereof.

(Code 1972, § 12.330; Ord. No. 133, § 8.01, eff. 11-2-1980)

Sec. 36-29. Regulation of rates and service.

At the time of the granting of any franchise hereunder, the city council shall approve and include therein all rates and charges allowable to the grantee, including but not limited to all such rates and charges for installation of equipment, service charges for all classifications of service including additional connections at one location, and any other rates or charges of the grantee to subscribers; and no such rates or charges shall be changed at any time after the granting of a franchise, except by authority of the city council,

and upon written request of the grantee; provided, that prior to authorizing the change of any rates or charges of the grantee to subscribers, at any time after the granting of such franchise, the council shall first pass its resolution of intention to do so, describing and stating any rates or charges to be changed, the reasons of the council therefor, fixing a day, hour, and place certain when and where any persons having any interest therein may appear before the council and be heard and directing the city clerk to publish notice of such hearing at least once. The city clerk shall cause such notice to be published in a newspaper of general circulation within the city, and the same shall be published and a copy thereof shall be mailed to any grantee hereunder at least ten days prior to the date specified for hearing thereon. At the time set for such hearing, or at any adjournment thereof, the council shall proceed to hear and pass on all presentations made before it, and the decision of the council thereon shall be final and conclusive. If the council shall find that a change of rates or charges is justified by a change in the costs of operation, the council may approve the change in rates.

(Code 1972, § 12.340; Ord. No. 133, § 9.01, eff. 11-2-1980)

Sec. 36-30. Enlargement of franchise area.

(a) If new territory shall be annexed to the city which shall be contiguous to only one of any franchise area in the city, said franchise area shall thereafter be deemed to include the new territory.

(b) If new territory shall be annexed to the city which shall be contiguous to more than one franchise area in the city, or which shall not be contiguous to any franchise area, then the council shall invite all grantees of franchises hereunder to submit sealed bids for such new territory, and such new territory shall become a part of the franchise area of the grantee determined by the council to be best suited to provide service to such territory based upon the quality of past service, proximity of facilities and capability.

(Code 1972, § 12.351; Ord. No. 133, § 10.01, eff. 11-2-1980)

Sec. 36-31. Inspection of property and records.

(a) The grantee shall at all reasonable times, and to the extent necessary to carry out the provisions of this article, permit any duly authorized agent or representative of the city to examine all franchise property of the grantee, together with any appurtenant property of the grantee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under the control or direction or at the request of the grantee which deal of the franchise operations, affairs, transactions, or property of the grantee.

(b) Any of such maps or other records which are not situated within the city and which are not made available in the city within a reasonable time after written request therefor by the manager, shall be produced for examination wherever the same shall be situated and the grantee shall pay all travel and other expenses necessarily or reasonably incurred by the city, its agents, and representatives in making such examination.

(c) The grantee shall prepare and furnish to the manager, at such times and in such form as prescribed by the manager, references, and materials with respect to the operations, affairs, transactions, or property of the grantee as may be reasonably necessary or appropriate to the performance of any of the duties of the manager. (Code 1972, § 12.352; Ord. No. 133, § 10.02, eff. 11-2-1980)

Sec. 36-32. Default.

Willful failure, refusal, or neglect by the grantee to comply with any requirement herein, or any term or condition of franchise issued hereunder, shall be sufficient cause for termination of any franchise by the city, as follows:

- (1) Upon the continuing of any such failure, refusal, or neglect for a period of ten days next following written demand by the manager that the grantee do or comply with any such requirement, limitation, term or condition, the manager may cause to be placed upon the agenda of a regular session of the council his request for ter-

mination of such franchise, and in such case, the manager shall cause to be served upon such grantee, at least five days prior to the date of such session of the council, a written notice of his intent to request such termination at the time and place of such session.

- (2) At such session of the council, or any adjournment thereof, the council shall consider the request of the manager and shall hear any persons desiring to be heard, and shall determine whether or not any such failure, refusal or neglect by the grantee was with just cause.
- (3) If the council shall determine such failure, refusal or neglect by the grantee was without just cause, then the council may pass its resolution declaring that the franchise of such grantee shall be terminated and forfeited unless there be compliance by the grantee within ten days, and such resolution shall operate to declare such franchise terminated and forfeited on the tenth day next following the passage thereof, and without further notice to the grantee, unless the grantee shall so comply within such ten-day period, such termination and forfeiture to become effective for all purposes 180 days thereafter.
- (4) Within 180 days after such declaration of termination and forfeiture, the grantee may sell, remove, or transfer the entire system of the grantee, subject to the provisions of section 36-28(3), and upon any such sale or transfer in addition to any other rights hereunder or otherwise, city shall have a lien (next in order of preference to any liens of encumbrances existing of record on the date of such termination and forfeiture) against any and all proceeds thereof, in the full amount of any loss, cost, expense or other financial detriment incurred by the city in the exercise of any right hereunder, or by reason of such termination and forfeiture.
- (5) If the grantee shall fail to refuse to sell, remove or transfer the entire system of the grantee, as hereinabove provided, and

regardless of the exercise of any other right of the city hereunder, then the city may institute appropriate court action to enforce the requirements of this section. (Code 1972, § 12.353; Ord. No. 133, § 10.03, eff. 11-2-1980)

Sec. 36-33. Violations.

(a) From and after the effective date of the ordinance from which this article is derived, it shall be unlawful for any person to construct, install or maintain within any public street in the city, or within any other public property of the city, or within any privately owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this article, and unless such franchise is in full force and effect.

(b) It shall be unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system within this city for the purpose of enabling himself or others to receive or use any television signal, radio signal, picture, program or sound, without payment to the owner of said system.

(c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound. (Code 1972, § 12.361; Ord. No. 133, § 11.01, eff. 11-2-1980)

Sec. 36-34. Penalty.

Any person, firm or corporation violating any provision of this article shall be responsible for a municipal civil infraction. (Code 1972, § 12.362; Ord. No. 133, § 11.02, eff. 11-2-1980)

Secs. 36-35—36-56. Reserved.

ARTICLE III. USE OF PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS

Sec. 36-57. Purpose.

The purpose of this article is to regulate the access to and ongoing use of public rights-of-way by telecommunications providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the public rights-of-way pursuant to the City Charter, the Michigan Telecommunications Act, Public Act No. 216 of 1995 (MCL 484.2101 et seq.), other state statutes (including, without limitation, MCL 247.183), and Mich. Const. art. VII, § 29 of the 1963 Michigan Constitution by:

- (1) Minimizing disruption of the public rights-of-way by regulating the access to and ongoing use of the public rights-of-way by telecommunications providers and the construction, installation, operation, and use of facilities in the public rights-of-way to provide telecommunication services;
- (2) Ensuring that the city and the public are protected from liability for use of the public rights-of-way by telecommunications providers;
- (3) Providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by telecommunications providers; and
- (4) Assisting telecommunications providers in understanding the city's requirements for use of the public rights-of-way and providing a fair and nondiscriminatory policy for permitting the use of the public rights-of-way by such providers.

(Code 1972, § 20.801; Ord. No. 190, § 1, eff. 3-30-2000)

Sec. 36-58. Reservation of rights.

The issuance of a permit or permits under this article and the access to and use of the public

rights-of-way by a telecommunications provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

- (1) *Right to require franchise.* Mich. Const. art. VII, § 29 of the 1963 Michigan Constitution and the City Charter require that all public utilities obtain a franchise to conduct a local business within the city. The applicability of this requirement to telecommunications providers may be challenged under section 102(dd) of the Michigan Telecommunications Act (MCL 484.2102(dd)) which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be unnecessary, the city hereby determines that telecommunications providers shall not be required at this time to obtain franchises for the transaction of local business within the city. Telecommunications providers shall be required to obtain and maintain a permit for access to and ongoing use of the public rights-of-way and to otherwise comply with the terms of this article. Such a permit shall not constitute a franchise. The city reserves the right to require telecommunications providers to obtain a franchise in the future to transact local business within the city.
- (2) *Rights regarding takings claim.* Certain cable or telecommunications providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities dispute that claim. The city believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment of the United States Constitution.

The legal issues involved in such disputes have not been finally decided. The city desires to act on applications for permits granting access to its public rights-of-way at this time rather than wait for determination of these issues; provided, this can be done without waiver or loss of any rights of the city or a permittee. Therefore, notwithstanding any other provision hereof, a permittee is not precluded by this article from seeking relief from the fee provisions of section 36-62 from any court or agency of competent jurisdiction. If a permittee seeks such relief, the city reserves the right to assert a takings claim and to take all action it deems necessary in support thereof. Neither this article nor the issuance or acceptance of a permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the city or the permittee in connection with these disputed issues, and the acceptance of a permit constitutes an acknowledgment and agreement thereto by the permittee.

- (3) *Option to obtain consent agreement.* The city finds that legislative, legal and regulatory issues in connection with use of the public rights-of-way by telecommunications providers and the resulting potential for litigation and delay are likely to have an adverse impact on the development of a healthy, competitive telecommunications infrastructure in the community. This would be detrimental to the city and its residents as well as to telecommunications providers. The issues affect, among other things, both the cost to telecommunications providers and compensation to the city for the maintenance and use of its public rights-of-way. In order to promote certainty, encourage competition and avoid litigation, the city will, at the request and sole option of an applicant or permittee, consider entering into a consent agreement for use of the public rights-of-way for the provision of telecommunications services on terms and conditions mutually acceptable to the city and the

telecommunications provider. It is the city's intent that such an agreement would satisfy the requirement for a permit under this article, and would include, among other things, a fee of up to five percent of the applicable gross revenues of the telecommunications provider, which would include the permit fee; an extended term of up to 15 years; authorization to conduct a local business in the city pursuant to Mich. Const. art. VII, § 29 of the 1963 Michigan Constitution; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A permittee may request a consent agreement at any time.

(Code 1972, § 20.802; Ord. No. 190, § 2, eff. 3-30-2000)

Sec. 36-59. Terms defined.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliate and *affiliated* mean any entity controlling, controlled by or under common control with a permittee.

City council means the city council of the city or his designee. This subsection does not authorize delegation of any decision or function that is required by law to be made by the city council. In any case in which a hearing is held pursuant to this article, the city council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

Control, controlling, and controlled mean effective control, by whatever means exercised, such as those described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Rcd 6828 (1993) at paragraphs 22—28 (adopting broadcast transfer of control standards as then in effect).

Local exchange service means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.

Permit means a nonexclusive permit issued pursuant to this article for access to and ongoing use of public rights-of-way by telecommunications providers for wires, poles, pipes, conduits, or other facilities designed or used to provide telecommunications services. The term "permit" does not include any other permits, licenses, or approvals required by the city or other governmental entities.

Permittee means a telecommunications provider, which has been issued a permit pursuant to this article.

Public rights-of-way means the public rights-of-way, easements, highways, streets, and alleys within the city.

Telecommunications Act means Act No. 216 of the Public Acts of 1995, as amended from time to time.

Telecommunications provider means a person who provides one or more telecommunications services for compensation.

Telecommunications services means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. "telecommunications services" does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.

Telecommunications system means facilities designed or used to provide telecommunications services.

(Code 1972, § 20.805; Ord. No. 190, § 5, eff. 3-30-2000)

Sec. 36-60. Permits.

(a) *Permit required.* No person shall use the public rights-of-way to provide telecommunications services without a permit issued pursuant to this article or a consent agreement under

section 36-58(3). For purposes of this article, use of the public rights-of-way includes the installation, construction, maintenance, repair, or operation of a telecommunications system within the public rights-of-way. In addition, a person providing local exchange service or other local telecommunications services is using the public rights-of-way for purposes of this article whether such person owns the facilities in the public rights-of-way outright or obtains the use of or access to the facilities from a third party under lease, contract, interconnection, or wholesale for retail or other similar arrangement. Failure to comply with the permit requirement of this section shall constitute a violation of this article. A person who violates this requirement shall comply with all requirements of this article applicable to a permittee and shall pay the annual fee plus late payment charges as provided by section 36-62 for the time period in which the violator did not have a permit plus the actual costs incurred by the city in enforcing this article against the person.

(b) *Consent agreement.* If a telecommunications provider negotiates a consent agreement with the city under the provisions of section 36-58(3), and the city determines that the consent agreement substantially satisfies the obligations of a telecommunications provider under this article, giving due regard to any special circumstances involving the telecommunications provider, the consent agreement will be deemed to satisfy the requirement of a permit under this article and under the Telecommunications Act. When a consent agreement is no longer in effect, the telecommunications provider shall be required to comply with all terms and conditions of this article as it may be amended from time to time.

(Code 1972, § 20.807; Ord. No. 190, § 7, eff. 3-30-2000)

Sec. 36-61. Permit application procedures.

(a) *Application.* A telecommunications provider shall apply for a permit pursuant to this article. The application shall be made on an application form provided by the city. Ten copies of the application shall be filed with the city clerk,

and two additional copies each shall simultaneously be filed with the city manager and city attorney.

(b) *Required information.* In addition to other information required by the application form or otherwise required by the city or this article, the application shall include, without limitation, the following information:

- (1) The name and address of the telecommunications provider and each person exercising control over the telecommunications provider, and if the telecommunications provider or any person or persons exercising control is not a natural person, each of its officers, directors, stockholders beneficially holding more than five percent of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than five percent;
- (2) Copies of the most recent financial statements of the telecommunications provider;
- (3) A description of:
 - a. The telecommunications provider's existing and proposed telecommunications system and telecommunications services in the city;
 - b. The types of existing and proposed wires and other facilities in the public rights-of-way; and
 - c. A statement whether such facilities are owned by the telecommunications provider, or if not owned by the telecommunications provider, a copy of the agreement or legal instrument granting the telecommunications provider the right to the use of or access to such facilities.
- (4) A map setting forth the specific location of the facilities in the public rights-of-way. The map shall identify the location of aboveground and underground facilities.

(c) *Application fee.* The application will be accompanied by a nonrefundable application fee in an amount established by this article or resolu-

tion of the city council. The nonrefundable application fee shall be designed to reimburse the city for the costs of reviewing an application for a permit and issuance of a permit in accordance with the procedures of this article.

(d) *Administrative completeness.* An application shall not be deemed to be filed for purposes of the 90-day permit application review period in section 251(3) of the Telecommunications Act unless and until the application is determined by the city manager to be administratively complete. A determination whether the application is administratively complete shall be made by the city manager within ten business days after the application is received by the city. If the city manager determines that the application is not administratively complete, the city manager shall so advise the telecommunications provider in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.

(e) *Additional information.* The city manager may request an applicant to submit such additional information which the city manager deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the city manager. If the applicant fails to provide the requested additional information by the deadline established by the city manager, the 90-day period for acting on the application under subsection (g) of this section shall be extended by the number of days after the deadline that the information was provided to the city manager.

(f) *Misleading statements.* A person who provides information to the city in connection with a permit application or any other matters under this section which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this article, and shall be subject to all remedies for violation of this article and the city Code including, without limitation, denial of the requested action and permit revocation pursuant to section 36-69. Each day that a person fails to correct an untrue statement of a material

fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this article.

(g) *Permit approval or denial.* Within 75 days after the city manager determines that the application is administratively complete (subject to any adjustments for delays in providing additional information as provided in subsection (e) of this section), the city council shall hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten days before the public hearing. Any report or recommendation on the application obtained or prepared by the city manager shall be mailed to the applicant not less than ten days before the public hearing. The applicant and any other interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the application. Following the public hearing, the city council shall approve, approve with conditions, or deny the application within 90 days after the city manager determines that the application is administratively complete pursuant to subsection (d) of this section, subject to any adjustments for delays in providing additional information as provided in subsection (e) of this section. The city council shall not unreasonably deny an application for a permit. The failure of the city to comply strictly with the procedural requirements of this section for the review of permit applications shall not invalidate the decision or proceedings of the city.

(h) *Conditions.* The city council may impose conditions on a permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a bond by the telecommunications provider in an amount, which shall not exceed the reasonable cost to ensure that the public rights-of-way are returned to their original condition during and after the telecommunications provider's access and use.

(i) *Modification.* The city council may, in its discretion, grant a modification of a specific requirement of sections 36-35, 36-63, 36-64, or 36-67 if the applicant requests such modification in its

application for a permit and if the applicant demonstrates that: there are exceptional or extraordinary circumstances which warrant a modification; the modification will not be detrimental to the public health, safety, and welfare; and the modification will not impair the intent and purposes of this article and its several sections. The application shall describe the applicant's request for a modification and the reasons for the request with specificity. A modification granted by the city council pursuant to this section shall expire upon the expiration of the permit or earlier if so determined by the city council. A modification shall modify only those requirements expressly set forth in the approval of the city council and shall not modify any other provisions of this article. If a request for a modification is denied by the city council, the telecommunications provider shall comply with all requirements of this article without exception.

(j) *Waiver.*

- (1) The city council shall grant a waiver of any requirement of this article if an applicant or permittee requests a waiver and the city council finds that:
 - a. Unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or permittee to provide any telecommunications service within the meaning of section 253(a) of the Federal Telecommunications Act, 47 USC 253(a);
 - b. The requirement is not within the scope of any state or local authority referenced in section 253(c) of the Federal Telecommunications Act, 47 USC 253(c); or
 - c. The requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers.
- (2) A request for a waiver may be included in an application for a permit.
- (3) A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request.

- (4) If the request is made in connection with an application for a permit, the provisions of subsections (e)—(g) of this section shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in subsection (g) of this section for holding a public hearing and acting on an application are extended by 90 days.
- (5) Subsections (a), (c) and (f) of this section shall apply to a waiver request that is not made in connection with a permit application, and the request may be denied for violation of or failure to comply with any of those provisions.
- (6) Subsection (g) of this section shall also apply to such a request, with the exception of the 75- and 90-day time periods set forth in that section, but the city council may by resolution establish different or additional procedures for conducting the public hearing and acting on the request. (Code 1972, § 20.808; Ord. No. 190, § 8, eff. 3-30-2000)

Sec. 36-62. Annual permit fees.

- (a) *Establishment of annual fees; payment.*
 - (1) In addition to the nonrefundable application fee set forth in section 36-61(c) and any other fees for other permits or authorizations required by the city Code, the permittee shall pay an annual fee in an amount established by resolution of the city council. The annual fee may be modified from time to time by resolution of the city council. The amount of the annual fee shall not exceed the fixed and variable costs to the city in maintaining the public rights-of-way used by a telecommunications provider unless otherwise permitted by law. The annual fee shall be payable quarterly as follows:
 - 1st quarter (January 1—March 31)—April 30
 - 2nd quarter (April 1—June 30)—July 31
 - 3rd quarter (July 1—September 30)—October 31

4th quarter (October 1—December 31)—
January 31

- (2) When a permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a quarterly payment is not paid when due, the permittee shall pay a late payment charge of the greater of \$100.00 or interest at the rate of one percent over the prime rate then charged by NBD Bank and computed monthly. A person who violates this article by failing to obtain a permit shall pay the annual fee plus late payment charges, as required by this section, for the time period in which the violator did not have a permit plus the actual costs of the city in enforcing this article against the person.

(b) *Option to pay annual fee based upon gross revenues.* A permittee, at its option, may elect to pay an annual fee of one percent of its annual gross revenues as set forth below, in lieu of and in full satisfaction of the annual fee established by the city council pursuant to subsection (a) of this section. Permittees may elect this annual fee option for administrative convenience in computing the fee or for any other reason.

- (1) An election shall be made within 45 days of applying for a permit or at least 60 days before the start of any calendar year after issuance of a permit.
- (2) Any election, once made, shall continue in effect until the end of the next three calendar years, such that an election made in a permit application in 1997 would continue in effect through the end of the year 2000.
- (3) An election shall be made on a form provided by the city. Copies of the form shall be submitted in the manner provided in section 36-61(a). The permittee shall supply all information requested on the form and any additional information that the city manager deems reasonably necessary or relevant, including information on affiliates of the permittee relating to the requirements of subsections (b)(5)—(7), and (c) of this section. After providing

notice and an opportunity to be heard the city may reject or revoke an election for failure to comply with this subsection.

- (4) The annual fees shall be paid quarterly by the same due dates as are set forth in subsection (a) of this section.
- (5) An election shall apply to all affiliates of a permittee. In making its election, a permittee shall expressly affirm that it has the authority to bind, and does bind, its affiliates to the obligations of this subsection, including subsection (b)(6) of this section and the audit and records provisions of subsections (b)(7) and (c) of this section.
- (6) For purposes of this subsection (b) of this section, the term "gross revenues" is defined in section 36-75.
- (7) If a permittee or any affiliate of a permittee refuses to pay the fees due under this option or prohibit or effectively prohibit the city from auditing the permittee or its affiliates under subsection (c) of this section to verify the accuracy of annual fees, then the city at its option may revoke the election for all or any portion of the time period in question. The annual fees computed under subsection (a) of this section shall then become immediately due and payable, less a credit for any sums paid by the permittee or its affiliates, plus the late payment charges set forth in subsection (a) of this section and any additional sums due under the last sentence of subsection (c) of this section.

(c) *Records.* All records (including those of affiliates) reasonably necessary to verify the accuracy of annual fees paid by the permittee under either subsection (a) or (b) of this section shall be made available by a permittee at a location within the city or within 20 miles of the city's boundaries. The city, by itself or in combination with other municipalities, reserves the right to audit any permittee (or any affiliate of a permittee) to verify the accuracy of annual fees paid or to be paid to the city. Any additional amount due the city shall be paid within 30 days of submission of an invoice. If the additional amount due exceeds

two percent of the total annual fee which the audit determines should have been paid for a calendar year, the permittee shall pay the city's costs in connection with the audit within 30 days of submission of an invoice.

(d) *Other payments.* The nonrefundable application fees and the annual fees established pursuant to this article shall be in addition to any tax, charge, fee, or payment due, or to become due, to the city by a permittee under the city Code or the laws of the state.

(e) *Misleading statements.* A person who provides information to the city in connection with any matter under this section which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this article, and shall be subject to all remedies for violation of this article and the city Code including, without limitation, rejection or revocation of an election under subsection (b) of this section and permit revocation pursuant to section 36-69. Each day that a person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this article.

(Code 1972, § 20.810; Ord. No. 190, § 10, eff. 3-30-2000)

Sec. 36-63. Duration of permit; renewal.

A permit shall remain in effect until December 31 following the fifth anniversary of the issuance of the permit (unless the permit expires pursuant to section 36-64(l) or the permit is earlier revoked pursuant to section 36-69). Applications for renewal of permits shall be filed in the same manner as original applications in section 36-61 and shall be filed with the city not less than 120 days before the expiration of the permit. The city expressly reserves all rights to approve, approve with conditions, or deny applications for permit renewals pursuant to this article and to impose additional conditions on renewed permits.

(Code 1972, § 20.811; Ord. No. 190, § 11, eff. 3-30-2000)

Sec. 36-64. Permit terms and requirements.

(a) *Nonexclusive; additional permits.* A permit shall be nonexclusive. The city expressly reserves the right to approve, at any time, additional permits for access to and ongoing use of the public rights-of-way by telecommunications providers and to enter into agreements and grant franchises for such access and use. The issuance of additional permits, entry into agreements, or grant of franchises shall not be deemed to amend, modify, revoke, or terminate the terms and conditions of any permits previously issued to telecommunication providers.

(b) *Underground cable or conduit use.* Unless expressly authorized by the permit, the telecommunications provider shall install, operate and maintain underground all cable, wire, facilities or apparatus used for the transmission of two-way interactive communication within the public rights-of-way. All undergrounding work shall be at the sole cost and expense of the permittee.

(c) *Expansion requests.* A permit approved by the city council shall authorize access to and ongoing use of the public rights-of-way described in the permit, subject to strict compliance with the conditions of the permit, the requirements of this article, and any other applicable requirements of the City Code or applicable state and federal law. The permittee shall not use any public rights-of-way not expressly authorized by the permit. Any use of the public rights-of-way (including any installation, construction, maintenance, repair, or operation of a telecommunication system within the public rights-of-way) to provide telecommunications services shall be performed only as authorized by the permit. A permittee may, however, expand its telecommunication system to public rights-of-way not described in its permit by obtaining approval of an amended permit from the city. Such approval may be granted in writing by the city manager in response to a written request from the permittee for expansion to specific portions of named public rights-of-way. The city council may establish by resolution a nonrefundable application fee for such a request. The city manager may grant, grant with conditions, or deny such request. The city manager shall not unreasonably deny any request. A denial

of any request may be appealed to the city council, which shall make the final decision. Any expansion into additional public rights-of-way shall be subject to all terms and conditions of the original permit and this article including, without limitation, the application of the annual fee to the expanded public rights-of-way used by the permittee.

(d) *Construction permit.* A permittee shall not commence construction upon, over, across or under the public rights-of-way in the city without first obtaining a construction permit as required under section 8-19, as amended, for construction within the public rights-of-way.

(e) *Lease or use of facilities; overlashing.* A permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the public rights-of-way by a person who is required to obtain a permit under section 36-60 or is required by law to obtain the city's permission or consent to transact local business in the city, and who lacks such permit, permission or consent. A permittee shall not allow the property of a third party or nontelecommunications system wires or any other facilities to be overlashed, affixed or attached to any portion of a permittee's telecommunications system; or allow other actions with a similar result without the written consent of the city manager.

(f) *As-built maps.* Without expense to the city, a permittee shall provide the city with as-built maps, records and plans showing its telecommunications system or portions thereof within the city, including those of affiliates used by the permittee, and maps and descriptive information of facilities of other persons used by the permittee. The city manager may waive part or all of this requirement if satisfactory records of the location of the telecommunications system were previously provided to the city. The as-built maps, records and plans shall be provided within 30 days of the completion of the telecommunications system and any extensions, additions, or modifications to the telecommunications system. In addition to the foregoing, a permittee, without expense to the city, shall, upon 48 hours notice, give the city access to all as-built maps, records, plans and specifications showing its telecommunica-

tions system or portions thereof within the city. Upon request by the city, a permittee shall inform the city as soon as possible (but no more than one business day after the request) of any changes from previously supplied maps, records, or plans and shall mark up maps provided by the city so as to show the location of its telecommunications system.

(g) *No recourse.* A permittee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of the failure of the city to have the authority to grant all or any part of a permit or the authority to grant permission to use all or part of the public rights-of-way. A permittee expressly acknowledges that on accepting a permit it did so relying on its own investigation and understanding of the power and authority of the city.

(h) *No inducement.* By acceptance of a permit, a permittee acknowledges that it has not been induced to obtain the permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the city or by any third person concerning any term or condition of a permit not expressed in this article.

(i) *Acceptance of terms and conditions.* Permittee acknowledges by the acceptance of a permit that it has carefully read its terms and conditions and does accept all of such terms and conditions.

(j) *No priority.* A permit does not establish any priority of use of the public rights-of-way by a permittee over any present or future permittees or parties having agreements with the city or franchises for such use. In the event of any dispute as to the priority of use of the public rights-of-way, the first priority shall be to the public generally, the second priority to the city, the third priority to the state and its political subdivisions in the performance of their various functions, and thereafter as between permittees, other permit holders, parties having agreements with the city, and franchisees, as determined by the city in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the state.

(k) *Future use by city.* A permittee acknowledges by accepting a permit that it obtains no rights to or further use of the public rights-of-way other than those expressly granted herein. Each permittee acknowledges and accepts as its own risk that the city may make use in the future of the public rights-of-way which a permittee is using or in which a permittee's telecommunications system is located in a manner inconsistent with the permittee's use of such public rights-of-way and that in such event the permittee will not be entitled to compensation from the city.

(1) *Expiration of permit.* Unless the city grants an extension, a permit shall expire one year from the date of issuance unless prior thereto the permittee either:

- (1) Commences construction, installation, or operation of its telecommunications system within the public rights-of-way authorized by the permit and diligently pursues completion of construction or installation; or
- (2) Commences use of the public rights-of-way to provide telecommunications services as authorized by the permit.

(Code 1972, § 20.812; Ord. No. 190, § 12, eff. 3-30-2000)

Sec. 36-65. Use of public rights-of-way by permittee.

(a) *No burden on public rights-of-way.* A permittee and its contractors and subcontractors and a permittee's telecommunications system shall not unduly burden or interfere with the present or future use of any of the public rights-of-way within the city. A permittee shall install and maintain its telecommunications system so as to cause minimum interference with the use of the public rights-of-way and with the rights and reasonable convenience of property owners. Permittee's cables and wires shall be suspended or buried so as to not endanger or injure persons or property in the public rights-of-way. If the city in its reasonable judgment determines that any portion of the telecommunications system constitutes an undue burden or interference, the permittee at its sole cost and expense shall modify its telecommunications systems or take such other actions as

the city may determine are in the public interest to remove or alleviate the burden, and the permittee shall do so within the time period established by the city.

(b) *Restoration of property.* A permittee and its contractors and subcontractors shall immediately restore, at the permittee's sole cost and expense and in a manner approved by the city, any portion of the public rights-of-way that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the telecommunications system to as good or better condition than that which existed prior to the disturbance. In the event that the permittee, its contractors or subcontractors fail to do so within the time specified by the city, the city shall be entitled to complete the work and the permittee shall reimburse the city for the costs of doing so.

(c) *Easements.* Any easements over or under private property necessary for the construction or operation of a telecommunications system shall be arranged and paid for by the permittee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by the permittee and a violation of this article. Any easements over or under property owned by the city other than the public rights-of-way shall be separately negotiated with the city.

(d) *Pavement cut coordination / additional fees.* A permittee shall coordinate all construction work in the public rights-of-way with the city's program for street construction, rebuilding, resurfacing and repair (collectively, street resurfacing). A permittee shall meet with the official of the city primarily responsible for the public rights-of-way at least twice per year to this end.

- (1) The goals of such coordination shall be to require a permittee to conduct all work in the public rights-of-way in conjunction with or immediately prior to any street resurfacing planned by the city, and to prevent the public rights-of-way from being disturbed by a permittee for a period of years after such street resurfacing.
- (2) In addition to any other fees or payments required by this article, a permittee shall pay to the city the sum as currently es-

established or as hereafter adopted by resolution of the city council from time to time for each 50 feet cut into or excavation of any public rights-of-way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the public rights-of-way and is in addition to all other fees required by this article or the City Code.

(e) *Marking.* A permittee shall mark any installations of its telecommunications system which occur after the effective date of the ordinance from which this article is derived as follows:

- (1) Aerial portions of its telecommunications system shall be marked with a marker on its lines on alternate poles, which shall state the permittee's name and provide a toll-free number to call for assistance;
- (2) Direct buried underground portions of its telecommunications system shall have:
 - a. A conducting wire placed in the ground at least several inches above the permittee's cable (if such cable is nonconductive);
 - b. At least several inches above that a continuous colored tape with the permittee's name and a toll-free phone number and a statement to the effect that there is buried cable beneath; and
 - c. Stakes or other appropriate aboveground markers with the permittee's name and a toll-free number indicating that there is buried telephone cable below.
- (3) Portions of its telecommunications system located in conduit, including facilities of others used by a permittee, shall be marked at each manhole with the permittee's name and toll-free telephone number to call for assistance.

(f) *Compliance with laws.* A permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership and use of its telecommuni-

cations system, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any chapter requiring the installation of additional conduit when a permittee installs underground conduit for its telecommunications system). Before any installation is commenced, the permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the city or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. A permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). A permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

(g) *Street vacation.* If the city vacates or consents to the vacation of public rights-of-way within its jurisdiction, and such vacation necessitates the removal and relocation of a permittee's facilities in the vacated right-of-way, the permittee shall, as a condition of the permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the city or a court of competent jurisdiction. The permittee shall relocate its facilities to such alternate route as the city, acting reasonably and in good faith, shall designate.

(h) *Relocation.* If the city requests a permittee to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, or other public projects, the permittee shall relocate, protect, support, disconnect, or remove its facilities, at its sole cost and expense, to such alternate route as the city, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the city.

(i) *Public emergency.* The city shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of a permittee, without any prior notice, if such action is deemed necessary by the mayor, city manager, police chief, or fire chief or their designees because of a public emergency.

Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to life, health, or property caused by any natural or manmade disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major watermain breaks, hazardous material spills, etc. The permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the city.

(j) *Miss dig.* If eligible to join, a permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

(k) *Use of existing facilities; undergrounding.* A permittee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles or other facilities unless expressly authorized by the permit.

(l) *Underground relocation.* If a permittee has its facilities on poles of the city or another public utility company pursuant to express authorization as provided in section 36-64(b) and the city or other public utility company relocates its facilities underground, the permittee shall relocate its facilities underground in the same location at permittee's sole cost and expense.

(m) *Pole/conduit license agreement; notification.* If a permittee forfeits or otherwise loses its rights under a pole/conduit license agreement with the city or other entity, then permittee shall notify the city manager in writing within 30 days.

(n) *Identification.* All personnel of a permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A permittee shall account for all identification cards at all times. Every service vehicle of a permittee and its contractors or subcontractors shall be clearly identified as such to the public with the permittee's name and telephone number.

(o) *911 emergency service.* As a condition of a permit, a permittee providing local exchange service shall provide 911 service within the city in accordance with the provisions of the applicable 911 service plan and the rules and orders of the state public service commission. (Code 1972, § 20.813; Ord. No. 190, § 13, eff. 3-30-2000)

Sec. 36-66. No city liability; indemnification.

(a) *City not liable.* The city, and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions, shall not be liable to a permittee or to its affiliates or customers for any interference with or disruption in the operation of a permittee's telecommunications system or the provision of telecommunications services, or for any damages arising out of a permittee's use of the public rights-of-way.

(b) *Indemnification.* As a condition of a permit, a permittee shall defend, indemnify, protect, and hold harmless the city, 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 of any nature (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of the permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the permittee, its officers, agents, employees, contractors, successors, or assigns. (Code 1972, § 20.815; Ord. No. 190, § 15, eff. 3-30-2000)

Sec. 36-67. Insurance.

(a) A permittee shall obtain and maintain in full force and effect for the duration of a permit the following insurance covering all insurable risks associated with its ownership or use of its telecommunications system:

- (1) A comprehensive general liability insurance policy, including completed operations liability, independent contractors liability, contractual liability coverage and coverage for property damage from perils

of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount as currently established or as hereafter adopted by resolution of the city council from time to time;

- (2) An automobile liability insurance policy covering any vehicles used in connection with its activities under its permit in an amount as currently established or as hereafter adopted by resolution of the city council from time to time; and
- (3) Workers' Compensation and Employer's Liability Insurance with statutory limits.

(b) The city shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless 30 days prior written notice is given to the city. A permittee shall provide the city with a certificate of insurance evidencing such coverage as a condition of issuance of the permit and shall maintain on file with the city a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the state or by surplus line carriers on the state insurance commission's approved list of companies qualified to do business in the state. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

(c) Each policy which is to be endorsed to add the city as an additional insured hereunder, shall contain cross liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

(d) If the insurance policies required by this section are written with deductibles in excess of an amount as currently established or as hereafter adopted by resolution of the city council from time to time, the deductibles shall be approved in advance by the city. A permittee agrees to indemnify and save harmless the city from and against

the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this article.

(e) The permittee shall require that its contractors and subcontractors working in public rights-of-way carry in full force and effect workers' compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which permittee is required to obtain under subsection (a) of this section with appropriate limits of coverage.

(f) The permittee's insurance coverage shall be primary insurance with respect to the city, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions. Any insurance or self-insurance maintained by any of them shall be in excess of the permittee's insurance and shall not contribute to it. (Code 1972, § 20.816; Ord. No. 190, § 16, eff. 3-30-2000)

Sec. 36-68. No assignment or transfer of control without city consent.

A permittee shall not assign or transfer a permit or any of its rights under a permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, nor shall there be a transfer of control of a permittee or its business, without the prior written consent of the city, which shall not be unreasonably withheld. The permittee shall reimburse the city for reasonable, actual costs incurred in the review of a request by the permittee for consent to an assignment or transfer of the permit or a transfer of control of a permittee or its business. Notwithstanding anything in this section to the contrary, the permittee may grant a security interest in its rights under a permit in favor of a third party without first obtaining the consent of the city. If a permit or any rights thereunder is assigned or transferred in whole or in part with the approval of the city, the terms and conditions of the permit and of this article shall be binding upon the successors and assigns of the permittee.

(Code 1972, § 20.817; Ord. No. 190, § 17, eff. 3-30-2000)

Sec. 36-69. Revocation.

(a) In addition to all other rights and powers reserved or pertaining to the city, the city reserves as an additional separate and distinct remedy the right to revoke a permit and all rights and privileges of a permittee in any of the following events or for any of the following reasons:

- (1) A permittee fails after 30 days' prior written notice to comply with any of the provisions of the permit or this article (except section 36-62(f)); or
- (2) A permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (3) All or part of a permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the permittee within 90 days from such sale;
- (4) A permittee violates section 36-962(f) or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the city;
- (5) The city condemns all of the property of a permittee within the city by the lawful exercise of eminent domain;
- (6) A permittee abandons its telecommunication system or fails to seek renewal of its permit;
- (7) A permittee fails to pay any fines due for violations of this article; or
- (8) A permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an ordinance providing for civil infractions.

(b) No revocation, except for reason of condemnation, shall be effective unless the city council shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without 30 days prior notice to the permittee and a hearing at which the permittee receives rudimentary due process.

(Code 1972, § 20.818; Ord. No. 190, § 18, eff. 3-30-2000)

Sec. 36-70. Removal.

(a) *Removal; underground.* Upon revocation of a permit, or upon expiration of a permit if the permit is not renewed, the permittee may remove any underground cable from the public rights-of-way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the permittee shall not remove any underground cable or conduit which requires trenching or other opening of the public rights-of-way along the extension of cable to be removed. The permittee shall remove, at its sole cost and expense, any underground cable or conduit which is ordered to be removed by the city based upon a determination, in the sole discretion of the city, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the city to remove cable or conduit shall be mailed to the permittee not later than 30 calendar days following the date of revocation or expiration of the permit. A permittee shall file written notice with the city clerk no later than 30 calendar days following the date of expiration or termination of the permit of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the city. Removal shall be completed not later than 12 months following the date of revocation or expiration of the permit. Underground cable and conduit in the public rights-of-way which is not removed within such time period shall be deemed abandoned and, at the option of the city, title shall be vested in the city. For purposes of this subsection, the term "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

(b) *Removal; aboveground.* Upon revocation of a permit, or upon expiration of a permit if the permit is not renewed, a permittee, at its sole cost and expense, shall, unless relieved of the obligation by the city, remove from the public rights-of-way all aboveground elements of its telecommunication system, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

(c) *Permits; restoration; completion.* A permittee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or ordinances of the city, shall conduct and complete the work of removal in compliance with all such applicable law or chapters, and shall restore the public rights-of-way to the same condition they were in before the work of removal commenced. (Code 1972, § 20.819; Ord. No. 190, § 19, eff. 3-30-2000)

Sec. 36-71. Other provisions not waived.

(a) Nothing in this article shall be construed as a waiver of any ordinances, Charter provisions, codes, or regulations of the city or the city's right to require permittee or persons utilizing the telecommunication system or telecommunications services to secure appropriate permits or authorization for such use.

(b) The city fully reserves its police powers to ensure and protect the public health, safety, and welfare and fully reserves its authority and power to amend this article at any time. The terms and conditions of any permit shall be subject to compliance with any future amendments of this article. The city fully reserves its right to exercise the reasonable control of the public rights-of-way pursuant to Mich. Const. art. VII, § 29 of the 1963 Michigan Constitution.

(c) Nothing in this article or any permit shall limit any right the city may have to acquire by eminent domain any property of a telecommunications provider.

(d) Nothing in this article or any permit shall limit the authority of the city to impose a tax, fee, or other assessment of any kind on any person. A telecommunications provider shall pay all fees necessary to obtain all federal, state, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its telecommunications system within the public rights-of-way. (Code 1972, § 20.821; Ord. No. 190, § 21, eff. 3-30-2000)

Sec. 36-72. Severability.

The various parts, sections and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the article shall not be affected thereby, except as provided in this section. If a court or administrative agency of competent jurisdiction determines, by a final, nonappealable order or an order from which no appeal has been taken within the time allowed, that any right or obligation of a permittee under this article is invalid, unconstitutional or unenforceable, then the permit shall become revocable and subject to termination without cause by either the city or the permittee on 60 days' written notice. In the event of termination under this section by the city, the procedures for revocation set forth in section 36-69 shall be followed. In the event of termination under this section by either the city or the permittee, the provisions of section 36-70 for removal shall apply.

(Code 1972, § 20.822; Ord. No. 190, § 22, eff. 3-30-2000)

Sec. 36-73. Authorized city officials.

The city manager or his designee is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this article as provided by this Code.

(Code 1972, § 20.823; Ord. No. 190, § 23, eff. 3-30-2000)

Sec. 36-74. Municipal civil infraction.

A person who violates any provision of this article is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$500.00 and not more than \$5,000.00, plus costs and other sanctions, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this article shall be subject to increased fines as follows:

First repeat offense	Not less than \$1,000.00 and not more than \$10,000.00
Second and subsequent repeat offense	Not less than \$2,000.00 and not more than \$20,000.00

(Code 1972, § 20.824; Ord. No. 190, § 24, eff. 3-30-2000)

Sec. 36-75. Appendix A gross revenues.

For the purpose of section 36-62, the term "gross revenues" means all amounts earned, received or accrued by a permittee and its affiliates in whatever form and from all sources which are in connection with or attributable to the permittee's telecommunications system in the city or to the permittee's or its affiliates' provision of telecommunications services within the city.

- (1) Gross revenues shall include, but not be limited to, all revenues from or attributable to customers, other carriers, or third parties whether for services, equipment, directories, publications, or otherwise. It shall include revenues of the types generally described in the revenue accounts of the FCC Uniform System of Accounts for Telecommunications Companies as in effect on October 31, 1996, 47 CFR 32 subpart D, whether or not the permittee or its affiliates are subject to such system of accounts, including accounts 4999 through 5302 and any cross referenced accounts or subaccounts which may be established by permittee or its affiliates relating to the preceding account numbers. Gross revenues shall include all services provided by a permittee or its affiliates, whether or not subject to regulation at the federal, state or local level. For transactions with affiliates gross revenues shall be computed in accordance with the principles set forth in 47 CFR 32.27 as in effect on October 31, 1996, including in particular section 32.27(d), and otherwise at the fair market rate.

- (2) Gross revenues shall include all amounts received, earned, or accrued during a period regardless of whether:
 - a. Received or not in the case of amounts earned or accrued;
 - b. The amounts are to be paid in cash, in trade, or by means of some other benefit to the permittee or its affiliates;
 - c. The goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure;
 - d. The amounts are characterized, separately identified, or accounted as being for goods, services, or fees to be paid to units of government or government agencies; or
 - e. The amounts are initially recorded or received by the permittee or by an affiliate.

However, gross revenues shall exclude uncollectible accounts during the period, computed on a fair basis consistently applied.

- (3) Gross revenues shall be computed at the level where first received from an entity not in any way affiliated with the permittee and shall not be net of:
 - a. Any operating expense;
 - b. Any accrual, including without limitation, any accrual for commissions; or
 - c. Any other expenditure.
- (4) Revenues from customers shall be allocated to the city based upon whether or not the location being provided service pursuant to the permit is located in the city and not by any other allocation method. Revenues from nonswitched telecommunications services shall be allocated to the city as set forth in appendix A-1.
- (5) Revenues whose source cannot be identified with a specific customer or city shall be allocated to the city based upon the

percentage of customers in the city compared to the number of customers served by that portion of permittee's telecommunications system (including portions outside the city) to which such revenues are reasonably attributable.

(Code 1972, § 20.831; Ord. No. 190, app. A, eff. 3-30-2000)

Sec. 36-76. Appendix A-1: Allocation of revenue from nonswitched telecommunications services.

Gross revenues from nonswitched telecommunications services shall be allocated to the city as follows:

- (1) For purposes of this appendix A-1, the term "nonswitched telecommunications services" means the two-way transmission of high speed digital voice, data and (for such applications as teleconferencing) video signals to:
 - a. Carry interexchange traffic between long distance carrier points-of-presence;
 - b. Interconnect user locations to interexchange carrier points-of-presence; and
 - c. Interconnect user locations.
- (2) If all the locations of a given customer receiving service from the permittee are in the city, gross revenues shall include all revenues received from or imputed to that customer.
- (3) If any but not all of the locations of a given customer receiving service from the permittee are in the city, the revenues attributable to the city shall be computed separately for each service taken by the customer. For each separate service taken the revenues attributable to the city are all revenues received from or imputed to that service times a fraction whose numerator is the number of locations of the customer within the city taking that service and whose denominator is all the customer's locations taking that service.
- (4) If (such as with an interexchange carrier which contracts for capacity from the permittee so as to connect with its customers through the permittee's telecommunications system) a customer uses the permittee's telecommunications system to connect to third parties, such third parties shall be treated as customers (or customer locations, as the case may be) for purposes of this provision and revenue attribution thereunder. The term "interexchange carrier" means a person who provides interexchange telecommunications service, commonly called a long distance carrier (Sprint, MCI and AT&T are examples), and typically deemed a carrier under the Federal Communications Act of 1934 or amendments thereto.
- (5) The different services taken by customers shall correspond with the classes of service offered by the permittee.
- (6) Examples of the preceding computations are as follows:
 - a. Example 1: A customer leases a 56 kbps data channel for \$5,000.00/month which serves/may be accessed by one customer location each in municipality A, municipality B, and municipality C. \$1,666.00/month is gross revenues from municipality A (one-third times \$5,000.00).
 - b. Example 2: A customer leases 3 T-1 telephone lines at \$400.00/month to connect to MCI. Gross revenues from municipality A are computed separately for each line as follows:
 1. The first connects a location in municipality B to an MCI point of presence in municipality A. \$200.00/month is the gross revenues from municipality A for this service (one-half times \$400.00).
 2. The second connects a location in municipality A to the same MCI point of presence. All \$400.00 is gross revenues from municipality A for this service.

3. The third connects a location in municipality C to a different MCI point of presence, located in municipality D. There are no gross revenues from municipality A for this service (but there would be gross revenues of \$200.00 each in municipality C and municipality D).
- c. Example 3: Sprint, an interexchange (long distance) carrier, leases a large amount of capacity from the permittee for \$50,000.00/month so that persons desiring to use its services may connect with it directly and not have to go through the local Ameritech central office. Sixteen customers take advantage of this service, comprising 42 locations, of which 28 locations are in municipality A. Sprint's point of presence is also in municipality A. \$41,667.00 is gross revenues from municipality A as follows:
1. \$25,000.00 (half of the \$50,000.00) is included because all the circuits (wherever the customer is located) connect to the point of presence in municipality A, i.e., each customer circuit is composed of two locations (one at the customer, one at Sprint), one of which is in municipality A.
 2. \$16,667.00 (28/42 of \$25,000.00) because the other half of the \$50,000.00 is attributable to the specific customer locations being connected to Sprint, of which 28 out of 42 are in municipality A.

(Code 1972, § 20.831; Ord. No. 190, app. A-1, eff. 3-30-2000)

ARTICLE IV. SMALL WIRELESS COMMUNICATIONS FACILITIES

Sec. 36-97. Purpose.

To regulate and provide a permitting process for the deployment of small wireless communications facilities in conformance with the small wireless communication facilities deployment act, Act No. 365 of the Public Acts of 2018 (the Act) and the FCC Declaratory Ruling and Third Report and Order entitled Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (the Order). In doing so, the City of Portland (the "authority") wishes to ensure the reasonable and fair control and management of public rights-of-way, support new technology, avoid interference with right-of-way use, and protect the public, health, safety, and welfare.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-98. Definitions.

Unless otherwise defined by this chapter, words shall have the meanings as set forth in the Act.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-99. Rate.

For each utility pole or wireless support structure in the ROW in the city on which a wireless provider has collocated a small cell wireless facility, the authority shall collect a rate as follows:

- (1) \$20.00 annually unless subdivision (2) applies;
- (2) \$125.00 annually, if the utility pole or wireless support structure was erected by or on behalf of the wireless provider on or after the effective date of the Act. This subdivision does not apply to the replacement of a utility pole that was not designed to support small cell wireless facilities.

Every five years after the effective date of the Act, the rate shall be increased by ten percent and rounded to the nearest dollar.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-100. Undergrounding designated area.

The authority shall have the power to prohibit above-ground installations in a designated area if that designated area has required undergrounded infrastructure at least 90 days before any application. In doing so, the authority shall make available to the public such designated areas and shall not prohibit replacement of existing authority poles. The authority shall also provide for a waiver process if no technically feasible structures exist in the designated area or may allow placement on other vertical structures, where available, commensurate with other structures in the area.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-101. Design and concealment measures for downtown districts and residential zoning districts.

The authority may publish design and concealment measures for Downtown Districts and Residential Zoning Districts. A wireless provider must adhere to written, objective, reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures which may be published from time to time by the authority.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-102. Permit required.

(1) A permit is required to collocate a small wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be collocated. Applicants shall submit:

- a. Information and documentation to enable the city to make a decision with regard to the criteria in Section 15(2)(i) of the Act.
- b. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
- c. If the proposed activity will occur within a shared ROW or a ROW that overlaps another ROW, a wireless provider shall provide to each affected authority to which an application for the activity is

not submitted, notification of the wireless provider's intent to locate a small cell wireless facility with the ROW.

- d. Proof of other necessary permits, permit applications, or easements to ensure all-necessary permissions for the proposed activity are obtained.

The application shall be processed in compliance with the Act.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-103. Spacing requirements for ground-mounted equipment and new utility poles.

A wireless provider shall not place new utility pole or ground-mounted equipment within any distance of another utility pole or ground-mounted equipment that would be in violation of any applicable laws or regulations nor closer than 125 feet from another utility pole or ground mounted equipment. The authority has the ability to waive separation distance requirements if the authority finds that it is necessary so as not to be prohibitive to the deployment of wireless services.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-104. Time to completion.

Pursuant to Section 15(2)(l) of the Act, within one year after a permit is granted, a wireless provider shall complete collocation of a small cell wireless facility that is to be operational for use by a wireless services provider or the permit shall be deemed void.
(Ord. No. 199, eff. 3-28-2019)

Sec. 36-105. Application fee.

An application fee for a permit shall be:

- (1) Two hundred dollars for each small cell wireless facility alone.
- (2) Three hundred dollars for each small cell wireless facility and a new utility pole to which it will be attached.

Every five years after the effective date of the Act, the maximum fees shall be increased by ten percent and rounded to the nearest dollar. (Ord. No. 199, eff. 3-28-2019)

Sec. 36-106. No permit required in certain instances.

No permit, any other approval, rate, or fee shall be required for:

- (1) The replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes.
- (2) Routine maintenance of a small cell wireless facility, utility pole or wireless support structure.
- (3) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-107. Application denial.

An application shall be denied if the proposed activity does any of the following:

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zones for transportation or pedestrians;
- (3) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement;
- (4) Materially interferes with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction the authority;
- (5) Materially interferes with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed;

- (6) Not located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to drainage infrastructure;
- (7) Fails to comply with spacing requirements as defined in this article that apply to the location of ground-mounted equipment and new utility poles;
- (8) Fails to comply with applicable codes;
- (9) Fails to comply with Section 13(7) or (8) of the Act;
- (10) Fails to meet stealth or concealment criteria for small cell wireless facilities as defined in this article or by the authority's published standards.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-108. Permit revocation.

The authority may revoke a permit, upon 30-days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole is in such a state as to meet the criteria for permit denial of this article. (Ord. No. 199, eff. 3-28-2019)

Sec. 36-109. Alternate location.

After receipt of an application to place a new utility pole, the authority may propose an alternate location within the ROW or on property or structures owned or controlled by the authority within 75 feet of the proposed location to either place the new utility pole or collocate on an existing structure. The applicant shall use the alternate location if able to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-110. Discontinuance.

Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the authority in writing. The notice shall specify

when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure.

The wireless provider shall return the property to its preinstallation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-111. Other permits.

A wireless provider shall obtain all applicable permits for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-112. Authority poles.

The rate for authority poles shall be \$30.00 per year per authority pole.

Every five years after the effective date of the Act, the rate will be increased by ten percent and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles is in addition to any rate charged for the use of the ROW.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-113. Existence of authority pole.

The authority is not required to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the authority makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-114. Hold harmless and insurance.

Any permit hereunder or zoning approval given shall require the wireless provider to do

the following with respect to a small cell wireless facility, a wireless support structure, or a utility pole:

Defend, indemnify, and hold harmless the authority and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these. A wireless provider has no obligation to defend, indemnify, or hold harmless an authority or the officers, agents, or employees of the authority or governing body against any liabilities or losses due to or caused by the sole negligence of the authority.

Obtain insurance naming the authority and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, cost liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the authority's insurance coverage and limit requirement by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this section. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the authority evidence demonstrating, to the authority's satisfaction, the wireless provider's financial ability to meet the authority's insurance coverage and limit requirements.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-115. Bond requirements.

If deemed appropriate for a particular installation, the authority may require a bond:

- (1) For the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare;
- (2) To repair the ROW;

- (3) To recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.

(Ord. No. 199, eff. 3-28-2019)

Sec. 36-116. General.

(1) A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.

(2) A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.

(3) A utility pole in the ROW installed or modified on or after the effective date of the Act shall not exceed 50 feet above ground level.

(4) If either the Act or the Order does not become effective or becomes ineffective or is modified due to court action or otherwise, this article shall conform to the court order or amendment or in the absence of the Act or Order the authority may implement reasonable procedures as the authority deems appropriate to process applications.

(5) In addition to all remedies contained in this article and as provided for by law, a person who violates any provision of this article is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$500.00 and not more than \$5,000.00, plus costs and other sanctions, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this article shall be subject to increased fines as follows:

First repeat offense: Not less than \$1,000.00 and not more than \$10,000.00;

Second and subsequent offense: Not less than \$2,000.00 and not more than \$20,000.00.

(Ord. No. 199, eff. 3-28-2019)

Secs. 36-117—36-137. Reserved.