

**CITY OF AUGRES
COUNTY OF ARENAC
TELECOMMUNICATIONS ORDINANCE No. 43**

The City of AuGres Ordains:

Section 1 Purpose.

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

Section 2 Conflict.

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

Section 3 Terms Defined.

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

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act being Act No. 48 of the Public Acts of 2002, as amended from time to time.

City means the City of AuGres.

City Council means the City Council of the City of AuGres or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

City Manager means the City Manager or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

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

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

Person means an individual corporation, partnership, association, governmental entity, or any other legal entity.

Public Right-of-Way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state or private right-of-way.

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

Telecommunications Provider, Provider and Telecommunications Services means those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

- (A). A cable television operator that provides a telecommunications services.
- (B). Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- (C). A person providing broadband internet transport access service.

Section 4 Permit Required.

(A). *Permit Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

(B). *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Manager, and one copy with the City Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.

(C). *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(D). *Application Fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of \$500.00.

(E). *Additional Information.* The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such request in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(F). *Previously Issued Permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirement of this ordinance.

(G). *Existing Providers.* Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to any additional 180 days to submit the permit application if allowed by the Authority as provided in Section 5(4) of the Act.

Section 5 Issuance of Permit.

(A). *Approval or Denial.* The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) of the ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

(B). *Form of Permit.* If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

(C). *Conditions.* Pursuant to Section 15(4) of the Act, the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(D). *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (C), above, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

Section 6 Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permits as required, for construction within the public rights-of-way. No fees shall be charged for such a construction or engineering permit.

Section 7 Conduit or Utility Poles.

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

Section 8 Route Maps.

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

Section 9 Repair of Damage.

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

Section 10 Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the City set forth in subsection 4(D) above, a telecommunications provider with telecommunications facilities in the City public right-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Section 11 Modification of Existing Fees.

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

Section 12 Savings Clause.

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

Section 13 Use of Funds.

Pursuant Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 41 of the Public Acts of 1951.

Section 14 Annual Report.

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

Section 15 Cable Television Operators.

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

Section 16 Existing Rights.

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

Section 17 Compliance.

The City hereby declare that its policy an intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City shall comply in all respects with the requirements of the Act, including but not limited to the following:

(A). Exempting certain route maps from the Freedom of Information act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(C), of this ordinance;

(B). Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(F) of this ordinance;

(C). Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 4(G) of this ordinance;

(D). Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with Section 5(A) of this ordinance;

(E). Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(A) of this ordinance;

(F). Not unreasonably denying an application for a permit, in accordance with Section 5(A) of this ordinance;

(G). Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(B) of this ordinance;

(H). Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(C), of this ordinance;

(I). Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(D) of this ordinance;

(J). Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;

(K). Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;

(L). Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and

(M). Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

Section 18 Reservation of Police Powers.

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

Section 19 Severability.

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

Section 20 Authorized City Officials.

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations directing alleged violators to appear in court for violations under this ordinance as provided by the City Code.

Section 21 Municipal Civil Infraction.

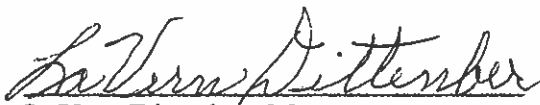
A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction and shall be subject to a fine of \$300 for each day of the violation. Nothing in this Section 21 shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.

Section 22 Repealer.

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

Section 23 Effective Date.

This ordinance shall take effect on October 31, 2002.


LaVern Dittenber, Mayor


Mary Fresorger, City Clerk

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**CITY OF AUGRES
COUNTY OF ARENAC
TELECOMMUNICATIONS RESOLUTION**

At a special meeting of the City Council of the City of Au Gres, County of Arenac, Michigan, held in said City on the 10th day of October, 2002; there were:

PRESENT: Mayor Pro Tem Ennes, Jim Dittenber, Kathy Graves, Robert Woolever

ABSENT: Mayor LaVern Dittenber

The following resolution was offered by Kathy Graves and seconded by Robert Woolever:

**RESOLUTION IMPLEMENTING CITY
TELECOMMUNICATIONS ORDINANCE**

WHEREAS, the State of Michigan recently enacted the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002 (the "Act"); and

WHEREAS, the Act, among other things, provides for a uniform permit and permit fee for access to and use of the public right-of-way by telecommunications providers; and

WHEREAS, the Act further provides, among other things, for a distribution of funds from the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (the "Authority"), established pursuant to Section 3 of the Act, provided the City takes certain action in compliance with the Act; and

WHEREAS, the City has, contemporaneously with this resolution, adopted Ordinance No. 43 (the "Ordinance") for purposes of complying with the requirement of the Act, so as to ensure that the City qualifies for distributions from the Authority under the Act; and

WHEREAS, the City desires to give additional instruction and direction to the City Manager and other City personnel charged with implementing the Ordinance;

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the City Manager is hereby authorized and directed to identify all telecommunications providers holding permits or authorizations issued by the City (and, as part of that process, to compile a list of all telecommunication providers who have paid fees to the City since 1990, all telecommunications providers identified in the City's engineering or construction permit files and all regulated telephone interexchange carriers and competitive access providers listed on the web site of the Michigan Public Service Commission and all regulated local telephone companies licensed in Michigan listed on such web site);

FURTHER RESOLVED, that the City Manager is hereby authorized and directed to provide a copy of the Ordinance to the cable company (ies) providing service in the City, and to all telecommunications providers identified above, in satisfaction of the requirements of Section 12(4) of the Act; and

FURTHER RESOLVED, that the finance department of the City is hereby directed to return, to telecommunication providers, any checks or portion of checks received by the City from such providers for access and usage of the public rights-of-way in the City after November 1, 2002.

Adopted this 10th day of October, 2002.

YEAS: Mayor Pro Tem Tom Ennes, Jim Dittenber, Kathy Graves, Robert Woolever

NAYS: None

ABSENT: Mayor LaVern Dittenber

CLERK'S CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of AuGres, County of Arenac, and State of Michigan, at a meeting held on October 10th, 2002, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, Act No. 267 of the Public Acts of Michigan 1976, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

Dated: October 11, 2002



Mary Fresorger, City Clerk