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Chapter 74 TELECOMMUNICATIONS

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ARTICLE I. IN GENERAL

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ARTICLE II. CABLE TELEVISION

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DIVISION 1. GENERALLY

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Sec. 74-31. 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:

Application means a proposal seeking authority to construct and operate a cable television system within the city pursuant to this article. It shall include the initial proposal plus all related subsequent amendments and correspondence with the city.

Basic service means subscriber cable television services, which includes the delivery of local television broadcast signals, access channels, leased channels, and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services.

Cable commission and *commission* mean a governmental or an intergovernmental authority that may be established by local legislative action that shall have the authority to police the provisions of a franchise agreement and make recommendations for enforcement or improvement on behalf of the city in an advisory manner. The terms "cable commission" and "commission" may include the city.

Cable communications system means a non-broadcast facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers cable television services, institutional services, or other communications services, but such term shall not include:

- (1) A facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility or combination of facilities that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility system.

Cable television services means the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.

City means the City of Montague, Michigan. The term "city" may include the term "cable commission" or "commission."

Connection means the attachment of the drop to the radio or television set or other communications device of the subscriber.

Construction, construction is completed, construction has been completed and construction shall be completed mean that strand has been put up and all necessary cable, including trunk and feeder cable, has been lashed; for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of season, landscaping restored; that all amplified housings and modules have been installed, including modules for return path signals if proposed, that power supplies have been installed and all bonding and grounding has

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been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the head-ends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable television service to subscribers in a safe and reliable manner has been completed consistent with the terms of the franchise and industry standards. The term "completion of construction" does not include marketing and installation of subscriber service.

Dedication means those dedications and easements for public roadways and utilities and other rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions, or limitations of which are not inconsistent with the erection, construction, or maintenance of a cable television system, its structures, or equipment.

Drop means the cable that connects a subscriber's premises to the nearest feeder line of the cable system.

Easement means a right to use all public rights-of-way, including public utility easements.

FCC means the Federal Communications Commission or any legally appointed or designated agent or successor.

Feeder line means the coaxial or fiber optic cable running from the trunk line to line extenders and taps for the purpose of interconnecting with individual subscribers.

File means the delivery, by mail or otherwise, to the appropriate office, officer, or agent of the city of any document or other instrument which this article requires the grantee to file with the city. The date of receipt by the city shall be considered the file date.

Force majeure means acts of God, strikes, acts of a public enemy, wars, blockades, insurrections, riots, unusual delays in transportation, reasonable inability of the grantee to procure materials, and earthquakes or any other natural causes beyond the grantee's reasonable control and which could not have been reasonably anticipated. The settlement of strikes or labor disturbances shall be entirely within the discretion of the party having the difficulty. Any requirement that force majeure shall be remedied with all reasonable dispatch shall not require settlement by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

Franchise means the nonexclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public rights-of-way, or public places in the city pursuant to a contractual agreement executed by the city and a grantee.

Gross revenues means all revenue from the cable communications system derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any other person in which the grantee has a financial interest in association with the provision of cable communications services within the city. Gross revenues shall include, but not be limited to, basic service monthly fees, institutional service fees, program service fees, installation, studio rental, production equipment and personnel fees, reconnection fees, leased channel fees, converter rentals, advertising revenues, and copyright fees. Gross revenues shall also include, valued at retail price levels, the value of any goods, services, or other remuneration in nonmonetary form received by the grantee or others described in this definition in consideration of performance by the grantee or others of any advertising or other service in connection with the cable system. Gross revenues shall not include any taxes on services furnished by the grantee payable to the state or any other governmental unit and collected by the grantee on behalf of such governmental unit, or any revenues from the provision of cable communications services outside the city.

Installation means the connection of the system at the subscriber's premises.

Premium service means pay television offered on a per-channel or per-program basis.

Service tier means a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.

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Street and public way mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the city for the purpose of public travel or public utilities, and shall include public easements or rights-of-way.

Subscriber means a recipient of cable communications services or other services provided over a cable communications system.

White Lake Area means all those governmental units in the vicinity of White Lake, specifically the City of Montague, City of Whitehall, Blue Lake Township, Fruitland Township, Montague Township, Whitehall Township, and White River Township.

(Code 1989, § 7.174)

Cross reference— Definitions generally, § 1-2.

Sec. 74-32. Purpose of article.

The purposes of this article are to:

- (1) Provide for the franchising and regulation of cable television within the city;
- (2) Provide for a cable communications system that will meet the current needs of the city and that can be improved and upgraded to meet future needs;
- (3) Provide for the payment of fees and other valuable consideration to the city for the use of the public ways and for the privilege to construct and operate cable communications systems;
- (4) Provide for the regulation by the city of certain rates to be charged to subscribers for certain cable communications services;
- (5) Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the city; and
- (6) Provide remedies and prescribe penalties for violation of this article and any franchise granted under this article.

(Code 1989, § 7.172)

Sec. 74-33. Applicability of article.

This article is applicable to any application for a cable franchise filed on or after February 1, 1993, and to any such franchise granted thereafter and to any franchise renewed thereafter.

(Code 1989, § 7.173)

Sec. 74-34. Service of notices.

- (a) All notices required to be given to the city under any provision of this article shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to the city clerk.
- (b) All notices required to be given to the grantee under any provision of this article shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to the grantee's address for service of notice.

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- (c) The grantee shall maintain within the White Lake area an office and address for service of notice by mail.

(Code 1989, § 7.221)

Sec. 74-35. Cable television commission.

The city council may establish a governmental or intergovernmental cable television commission consisting of a minimum of three persons having authority to act for and on behalf of the city in an advisory capacity regarding any matters relating to the administration of this article. The legislative body may increase or decrease the number of commission members, or change the membership of the commission, or alter the authority and power of such commission from time to time as it may deem necessary and desirable. The grantee shall cooperate with the commission in respect to those matters and powers vested with it as set forth by the legislative body.

(Code 1989, § 7.223)

Secs. 74-36—74-60. Reserved.

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Sec. 74-61. Required.

It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications system within the city without a valid franchise obtained pursuant to the provisions of this article.

(Code 1989, § 7.181)

Sec. 74-62. Term.

The term of a franchise shall be as specified in the franchise agreement, but it shall not exceed a period of 15 years.

(Code 1989, § 7.182)

Sec. 74-63. Use of city property.

- (a) A franchise grants to the grantee the authority to use the city's public streets, sidewalks, easements, and other rights-of-way for the purposes of this article. No property right is bestowed by a franchise.
- (b) A franchise shall authorize the use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable television communications system but shall neither expressly nor impliedly be deemed to authorize the grantee to provide service to or, install cables, wires, lines, or any other equipment or facilities upon private property without an applicable easement or the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

(Code 1989, § 7.183)

Sec. 74-64. Franchise non-exclusive.

The grant of authority for use of the city's public streets, sidewalks, easements, and other rights-of-way is not exclusive and does not establish priority for use over other franchise holders or permit holders, or the city's own use of public property. A grantee shall respect the rights and property of the city and other authorized users of public streets, sidewalks, easements, and rights-of-way. Disputes over the use of the public streets, sidewalks, easements, and other rights-of-way shall be submitted to the city for resolution, which decision shall be final.

(Code 1989, § 7.184)

Sec. 74-65. Application procedure and contents.

- (a) Applications for a cable television franchise will be considered pursuant to the following procedures:
 - (1) An application may be filed at any time or pursuant to a request for proposals (RFP) issued by the city.
 - (2) The city may request additional information from an applicant for a franchise at any time.
 - (3) All applications, to be acceptable for filing, must be accompanied by a filing fee as set forth in the annual fee resolution adopted by the city council. The city shall apply all filing fees received against

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all costs associated with its evaluation of any pending application. If total costs are less than total filing fees, the city shall refund a portion of the filing fee.

- (b) To be acceptable for filing, an application must conform to any applicable RFP and all the information specified therein. Where an application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:
- (1) Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each.
 - (2) An indication of whether the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked, or been found guilty by any court or administrative agency in the United States of a violation of: (i) a security or antitrust law, or (ii) a felony or any other crime involving moral turpitude. The application shall identify any such person or entity and fully explain the circumstances.
 - (3) A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed cable facility.
 - (4) A description of the physical facility proposed, including channel capacity (one-way and two-way if any), the area to be served, a summary of technical characteristics and head-end and access facilities.
 - (5) A description of how any construction will be implemented, identification of areas having aboveground or belowground cable facilities, the proposed construction schedule and a description (where appropriate) of how service will be converted from any existing facility to a new facility.
 - (6) A description of the services to be provided over the system, including identification of television signals (both broadcast and non-broadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, the application shall identify the signals and/or services to be included on each tier.
 - (7) The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters and other services.
 - (8) Information as necessary to demonstrate compliance with all relevant requirements contained in this article.
 - (9) A demonstration of how the proposal is reasonable to meet the future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the city.
 - (10) A demonstration that the proposal is designed to be consistent with all federal and state requirements.
 - (11) Pro forma financial projections for each year of the franchise term. The projections shall include a statement of income, balance sheet, statement of sources and uses of funds and schedule of capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.
 - (12) A complete list of all cable communications systems in which the applicant, or a principal thereof, holds an equity interest.
 - (13) An affidavit of the applicant, or duly authorized officer thereof, certifying, in a form acceptable to the city, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.

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- (14) In the case of an application by an existing franchisee for a renewed franchise, a demonstration that the franchisee has substantially complied with the material terms of the existing franchise and with the applicable law.
- (15) Other information that the city, or its agents, may request of the applicant.
- (c) Any person who files an application with the city for a cable television franchise shall forthwith, at all times, disclose to the city, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the city shall have rejected an applicant's application or until an applicant withdraws its application.

(Code 1989, §§ 7.191—7.193)

Sec. 74-66. Review of application; granting of franchise; franchise agreement.

- (a) The city will consider each application for a franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this article and any applicable request for proposals. In evaluating an application, the city will consider, among other things, the applicant's past service record in other communities, the nature of the proposed facilities and services, proposed rates, and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the city. Where the application is for a renewed franchise, the city shall consider whether:
 - (1) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (2) The quality of the operator's service, including signal quality, response to consumer complaints and billing practices (but without regard to the mix, quality or level of cable services or other services provided over the system) has been reasonable in light of community needs;
 - (3) The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and
 - (4) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (b) Where the city determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise to the applicant. The franchise agreement will constitute a contract, freely entered into, between the city and the grantee. The franchise agreement shall incorporate by reference the relevant provisions of this article. Any such franchise must be approved by ordinance of the city council.
- (c) In the course of considering an application for a renewed franchise, the city council shall hold a public hearing, following at least 14 days prior notice, in which the public and the franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses. A recording shall be made of such hearing. Based on the record of such hearing and the application (including any negotiations relative thereto), the city council shall determine whether to grant a renewed franchise and shall issue a written opinion stating the reasons for its decision.
- (d) A franchise granted pursuant to this article shall not take effect until the applicant pays a grant fee to the city. The grant fee shall be equal to the city's direct costs in the franchising process less the application filing fees received. The city shall provide to the grantee a statement summarizing such costs prior to the execution of the franchise.

(Code 1989, § 7.194)

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Sec. 74-67. Acceptance by grantee.

A franchise and its terms and conditions shall be accepted by a grantee by written instrument, in a form acceptable to the city attorney and filed with the city within 30 days after the granting of the franchise by the city. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this article and the franchise and accepts all of the terms and conditions of this article and the franchise and agrees to abide by such conditions. In accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the franchise and that it accepts all reasonable risks related to the interpretation of the franchise.

(Code 1989, § 7.195)

Sec. 74-68. Non-transferability of rights.

- (a) A franchise issued pursuant to this article shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consideration, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise under this article be changed, without the prior consent of the city, which shall not be unreasonably withheld. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented. Change in control by virtue of inheritance shall not come into the provisions of this section. A rebuttable presumption that a change in controlling interest has occurred shall arise upon the acquisition or accumulation by any person or group of persons of five percent of the voting shares of the grantee, except where such person or group of persons owns 50 percent or more of the voting stock, singularly or collectively, before such acquisition or accumulation.
- (b) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into all qualifications of the prospective controlling party, and the grantee shall assist the city in any such inquiry. The city may require any reasonable conditions which it deems necessary at the time of review to ensure that the cable communications system will comply with the provisions of this article for the balance of the term of the franchise.
- (c) Any unauthorized transfer in violation of this section shall be deemed a material breach in default of this article and shall subject the grantee to all applicable penalties and remedies prescribed in this article and to all other remedies, legal and equitable, which are available to the city.
- (d) The grantee shall notify the city of any occurrence which constitutes an unauthorized transfer under this section, or of the entry of any judgment, petition, or order as provided in sections 74-73 and 74-74, within four days of the occurrence of such event.

(Code 1989, § 7.201)

Sec. 74-69. Letter of credit.

- (a) The grantee shall deposit with the city a cash bond or letter of credit from a financial institution chosen by the grantee and approved by the city in the amount of \$5,000.00. The letter of credit may not be revoked or terminated until completion of the system plus an additional 60 days except with written approval of the city. Thereafter a \$3,500.00 cash bond shall be maintained. The form and content of such cash bond or letter of credit shall be approved by the city attorney. The cash bond or letter of credit shall be used to ensure the faithful performance by the grantee of all provisions of this article,

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compliance with all orders, permits, and directions of any agency, authority, board, department, division, or office of the city having jurisdiction over its acts or defaults under the license, and the payment by the grantee of any costs, claims, liens, liquidated damages, and taxes due the city which arise by reason of the construction, operation, or maintenance of the system, or breach or termination of the franchise.

- (b) If the grantee fails to make timely payment to the city or its designee of any amount due as a result of this article, or of any other written agreements between the grantee and the city, or fails to make timely payment to the city of any taxes due, or fails to repay the city for damages, costs, or expenses which the city shall be compelled to pay by reason of any default of the grantee, or fails to comply with any provision of this franchise which the city reasonably determines can be remedied by a draw on the irrevocable letter of credit, the city may draw upon the letter of credit in the amounts sufficient to repay the city, with interest and any penalties, plus costs and reasonable attorney fees incurred thereby.
- (c) Not later than 30 days after the mailing of notification to the grantee of drawing pursuant to subsections (a) and (b) of this section, the grantee shall cause the letter of credit to be restored to the full amount required by this section. Failure to effect timely restoration of the letter of credit shall constitute a material breach of this article and the franchise.
- (d) Upon termination of the franchise, the letter of credit shall be delivered to the grantee within 90 days of such termination, provided there are no outstanding defaults on the part of the grantee which result or may result in assessment of liquidated damages. The remainder of the letter of credit, less such assessment, shall be forthwith delivered to the grantee.
- (e) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this article or related documents or authorized by law, and no action, proceeding, or exercise of a right with respect to such letter of credit shall affect any other right the city may have.
- (f) Failure to deposit the letter of credit as required in this section, or failure to maintain the letter of credit, in the full amount required by this section, in effect during the entire term of the franchise agreement, and of any renewal or extension thereof, shall constitute a material breach of this article.

(Code 1989, § 7.202)

Sec. 74-70. Insurance and indemnity requirements.

- (a) After the granting of the franchise and following simultaneously with the filing of the acceptance of the franchise and at all times during the term of the franchise, the grantee shall obtain and deliver to the city written evidence of payment of premiums for and the originals or duplicate originals of the following:
 - (1) A general comprehensive public liability policy indemnifying, defending, and holding harmless the city and its officials, boards, authorities, agents, and employees from and against all claims by any person whatsoever, including the costs, defense costs, attorney fees, and interest arising therefrom, on account of injury to or death of a person occasioned by the operations of the grantee under the franchise granted under this article, or alleged to have been so caused or occurred, with a minimum liability of \$1,000,000.00 per personal injury or death of any one person and in any one accident or occurrence.
 - (2) A property damage insurance policy indemnifying, defending, and saving harmless the city and its officials, boards, authorities, agents, and employees from and against all claims by any persons whatsoever, including the costs, defense costs, attorney fees and interest arising therefrom, for property damage occasioned by the operation of the grantee under the franchise granted under this article, or alleged to have been so caused or occurred, with a minimum liability of \$500,000.00 for property damage to the property of any one person in any one accident or occurrence.

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- (b) All insurance policies called for in this section shall be in a form reasonably satisfactory to the city attorney.
- (c) Failure to comply with the provisions of this section shall constitute a material breach of this article and the franchise.

(Code 1989, § 7.203)

Sec. 74-71. Payment of fees and costs.

- (a) The grantee, in consideration of the privilege granted under a franchise for the use of public ways and the privilege to construct and operate a cable television system, shall pay to the city not more than five percent of its total revenues for the entire term of the franchise.
- (b) The grantee shall file with the city, by the end of each year, a financial statement showing the total revenues received by the grantee during the preceding calendar year. The grantee shall pay the yearly portion of the franchise fee to the city on or before the time such financial statement is due to be filed. The grantee shall also file, no later than one month after the end of its fiscal year, a statement of its total basic service revenues for the preceding fiscal year, audited by an independent public accountant, certified in the state, if so requested by the city. The grantee shall bear the cost of such audit. Any franchise fee payment in adjustment for any shortfall of the total annual payment for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent yearly payments.
- (c) If the franchise is revoked or otherwise terminated prior to its expiration date, the grantee shall file with the city, within 90 days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.
- (d) Nothing in this article or the franchise agreement shall limit the city's authority to tax the grantee.
- (e) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable under the provisions of this article or the franchise agreement. All amounts paid shall be subject to auditing and revision by the city.
- (f) Failure to comply with this section shall constitute a material breach of this article or the franchise agreement and shall subject the grantee to all measures, legal or equitable, whether available to the city under this article or otherwise.

(Code 1989, § 7.204)

Sec. 74-72. Forfeiture and termination.

In addition to all other rights and powers retained by the city under this article and any franchise issued pursuant thereto, the city reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchisee, with or without cause, by majority vote of the city council after at least 30 days prior written notice, with reasons if any, and an opportunity to appear and make arguments at the public hearing before the city council.

(Code 1989, § 7.205)

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Sec. 74-73. Effect of foreclosure.

- (a) Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, the grantee shall notify the city of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this article governing the consent of the city to such change in control of the grantee shall apply.
- (b) If a secured creditor of the grantee forecloses upon the grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

(Code 1989, § 7.206)

Sec. 74-74. Effect of receivership.

- (a) The city shall have the right to cancel a franchise 120 days after the appointment of a receiver to take over and conduct the business of the grantee, unless such receivership shall have been vacated prior to the expiration of such 120 days, or unless:
 - (1) Within 120 days after the election or appointment, such receiver shall have fully complied with all of the provisions of the franchise and remedies and defaults thereunder; and
 - (2) Within such 120 days, such receiver shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver assumes and agrees to be bound by each and every provision of the franchise as granted to the grantee except where expressly prohibited by state law.
- (b) The grantee shall immediately notify the city in writing if:
 - (1) The grantee files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors;
 - (2) The grantee files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or
 - (3) The grantee is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property, including all or any part of the cable system.
- (c) If a secured creditor of the grantee forecloses upon the grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

(Code 1989, § 7.207)

Sec. 74-75. Removal of system.

At the expiration of the term for which the franchise issued under this article is granted or upon its termination as provided in this article, the grantee shall, within 180 days after notice by the city, remove at its own expense all designed portions of the cable communications system from all streets and public ways within the city and shall restore the streets and public ways to their former condition. The grantee shall have the right to sell the physical plant to a subsequent grantee, subject to city approval, in which case the plant

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need not be removed. If the grantee fails to remove all facilities within 180 days after notice by the city, the city may perform the work at the grantee's expense or assume ownership of any and all of the grantee's physical properties not properly removed in accordance with this section.

(Code 1989, § 7.208)

Secs. 74-76—74-100. Reserved.

FOOTNOTE(S):

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Charter reference— Franchises, §§ 2.11(3), 9.04. ([Back](#))

DIVISION 3. OPERATIONAL RULES

[Sec. 74-101. Rates.](#)

[Sec. 74-102. Records.](#)

[Sec. 74-103. Public drops; emergency override capability.](#)

[Sec. 74-104. Parental control devices.](#)

[Sec. 74-105. Availability of facilities.](#)

[Secs. 74-106—74-130. Reserved.](#)

Sec. 74-101. Rates.

- (a) The initial rates which the grantee shall charge shall not be increased for a period of two years from the date of granting of a franchise or renewal.
- (b) The city reserves the right to reasonably regulate by ordinance or resolution the rates for any service or equipment, as allowed by state and federal law. Such rates and charges subject to regulation shall be just and reasonable, considering the grantee's costs, including reasonable return on investment over the remaining term of the franchise, and shall not give preference or advantage to any subscriber or class of subscribers. Fees and charges subject to regulation by the city pursuant to state and federal law shall not be increased without prior approval of the city. The city shall promptly respond to any request for an increase in fees and to charges subject to such regulation.
- (c) Rates and charges not regulated by the city may be changed by the grantee following a minimum 30 days prior written notice to the city and each subscriber.

(Code 1989, § 7.209)

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Sec. 74-102. Records.

The grantee shall maintain a complete set of books and records within the county. Upon reasonable notice to the grantee, the city will have the right to inspect all records relating to cable operations pursuant to the franchise at any time during normal business hours.

(Code 1989, § 7.210)

Sec. 74-103. Public drops; emergency override capability.

- (a) The grantee shall provide, without charge, one drop to any four school district buildings and to any four municipal buildings as determined by the district and city. The grantee shall furnish public drops with two-way modulators limited to the public governmental/school access channel. A character generator, purchased by the cable commission, shall be installed by the grantee at a location and time to be determined by the commission, with an additional unit provided to the school district if a second public access channel is provided.
- (b) The cable television system installed by the grantee shall include an emergency alert audio override capability which will permit designated officials of the commission to override by remote control the audio of all channels for the purposes of public notification of emergency conditions only. The commission shall pay for all costs, excluding installation and the monthly dedicated phone line charge, which shall be paid for by the grantee, associated with the emergency alert audio override.

(Code 1989, § 7.211)

Sec. 74-104. Parental control devices.

The grantee shall provide subscriber-controlled lock-out devices, audio and visual, at no additional cost to subscribers, upon their request. These devices should provide the greatest degree of parental discretion and control. The city may designate by resolution specific devices by brand and model and may revise its designations as improved devices become available.

(Code 1989, § 7.212)

Sec. 74-105. Availability of facilities.

The grantee shall supply its facilities to all residents of the city who may request this service where there is a population density of 20 homes per mile of service and shall maintain a centrally located business office within the White Lake area open at all reasonable business hours to all persons in the city who desire the services of the licensee.

(Code 1989, § 7.224)

Secs. 74-106—74-130. Reserved.

ARTICLE III. COMMUNITY ANTENNA TELEVISION SYSTEMS

[Sec. 74-131. Definitions.](#)

[Sec. 74-132. Application for license.](#)

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[Sec. 74-133. Compliance with applicable laws and regulations.](#)

[Sec. 74-134. Indemnification of city.](#)

[Sec. 74-135. Insurance.](#)

[Sec. 74-136. Licensee rules.](#)

[Sec. 74-137. Notice of interruption of service.](#)

[Sec. 74-138. Amount of payment to city.](#)

[Sec. 74-139. Fixing of rates.](#)

[Sec. 74-140. Savings in costs to be passed on to customers.](#)

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[Sec. 74-142. Change of rates.](#)

[Sec. 74-143. Records and reports.](#)

[Sec. 74-144. Due dates for payment of fee to city.](#)

[Sec. 74-145. Transfer of license.](#)

[Sec. 74-146. Programming standards.](#)

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[Sec. 74-150. Color television.](#)

[Sec. 74-151. Limitation on service to system.](#)

[Sec. 74-152. License required.](#)

[Sec. 74-153. Suspension or revocation of licenses.](#)

[Secs. 74-154—74-190. Reserved.](#)

Sec. 74-131. 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:

CATV means community antenna television systems.

Licensee means a person to whom a license has been issued pursuant to provisions of this article.

(Code 1989, § 7.111)

Cross reference— Definitions generally, § 1-2.

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Sec. 74-132. Application for license.

Every person desiring to install, erect, construct, operate, and maintain a community television antenna plant within the city shall make application in writing, signed by the applicant or his duly authorized agent, to the city clerk. The application shall be accompanied by a general plan of the system and a financial statement of the applicant. Each applicant shall in his application accept the terms of this article and agree to perform all the conditions thereof.

(Code 1989, § 7.112)

Sec. 74-133. Compliance with applicable laws and regulations.

Any person duly licensed to operate a CATV system shall at all times be subject to all lawful exercise of the police power by the city and to such reasonable regulation as the city shall hereafter by resolution or ordinance provide, which rules may include a rule prohibiting the use of the city streets and alleys for the installation of an entirely new system of utility poles or underground cable to be used exclusively for the transmission of television programs.

(Code 1989, § 7.113)

Sec. 74-134. Indemnification of city.

Each applicant for a license under this article shall in his application agree to save the city harmless from all loss sustained by the city on account of any suit, judgment, execution, claim, or demand whatsoever resulting from negligence on the part of the company in the construction, operation, or maintenance of his CATV system in the city. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any such negligence on the part of such licensee.

(Code 1989, § 7.114)

Sec. 74-135. Insurance.

Each applicant for a license under this article shall in his application demonstrate by certificate of insurance that he is protected by liability insurance issued by an insurance company authorized to do business in the state against claims for property damage in the amount of \$25,000.00 for any one accident and for personal injuries in the amount of \$100,000.00 for a personal injury to any one person, and \$300,000.00 for all personal injuries resulting from any one accident.

(Code 1989, § 7.115)

Sec. 74-136. Licensee rules.

The licensee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of his business as shall be reasonably necessary to enable the licensee to exercise his rights and perform his obligations under this article and to ensure an uninterrupted service to each and all of his customers, provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this article, or the rules of any state or federal regulatory agency, or the laws of the state.

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(Code 1989, § 7.116)

Sec. 74-137. Notice of interruption of service.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to his customers, and, unless such interruption is unforeseen and immediately necessary, he shall give reasonable notice thereof to his customers.

(Code 1989, § 7.117)

Sec. 74-138. Amount of payment to city.

The licensee shall pay to the city, for the privilege of operating a CATV system under this article, a sum equivalent to three percent of the annual gross operating revenues taken in and received by him on all retail sales of television signals within the city and for all service installations and reconnects in excess of the amount that may be paid to a utility company for such service installations and reconnects.

(Code 1989, § 7.118)

Sec. 74-139. Fixing of rates.

Rates to be charged for service under this article shall be fair and reasonable and designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The licensee agrees that he shall be subject to all authority now or hereafter possessed by the city or any other regulatory body having competent jurisdiction to fix just, reasonable, and compensatory television signal distribution rates. When his license shall take effect, the licensee shall have authority to charge and collect not to exceed the scheduled rates attached to and made a part of the licensee's application.

(Code 1989, § 7.119)

Sec. 74-140. Savings in costs to be passed on to customers.

If, during the term of the license, a licensee receives refunds, or if the cost to the licensee of receiving the television signals which he relays is reduced by order of any regulatory body having competent jurisdiction, the licensee shall pass on to his customers such refunds or any savings resulting from such reduced costs.

(Code 1989, § 7.120)

Sec. 74-141. Preferential or discriminatory practices prohibited.

A licensee shall not, as to rates, charges, service facilities, rules, or regulations, or in any other respect, make or grant preference or advantage to any person, or subject any person to any prejudice or disadvantage, provided, however, that nothing in this article shall be deemed to prohibit the establishment of free-of-charge service to public or private educational institutions, hospitals, eleemosynary institutions, and such public buildings as fire stations, police stations, or the city hall.

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(Code 1989, § 7.121)

Sec. 74-142. Change of rates.

The city shall have the right to approve the rates charged subscribers under this article. There shall be no change to the rate structure as to installation or monthly service charges without the express consent of the city council. The licensee, should he desire to adjust the rates, must make a proposal in writing to the council through the clerk at least 60 days prior to the effective date of a suggested adjustment.

(Code 1989, § 7.122)

Sec. 74-143. Records and reports.

The city shall have access at all reasonable hours to all of the licensee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the licensee in the city and to all other records required to be kept under this article. The following records and reports shall be filed with the city clerk and in the local office of the licensee:

- (1) Copies of such rules, regulations, terms and conditions as are adopted by the licensee for the conduct of his business.
- (2) An annual summary report showing gross revenues received by the licensee from his operations within the city during the preceding year and such other information as the city shall request with respect to properties and expenses related to the licensee's service within the city.

(Code 1989, § 7.123)

Sec. 74-144. Due dates for payment of fee to city.

The licensee shall pay to the city treasurer the license fee mentioned in section 74-138 within 30 days after each half of his fiscal year, following his inception of service to subscribers located in the city. At the same time he shall file with the city clerk a summary report of gross revenues received by the licensee during such period from his subscribers located within the city.

(Code 1989, § 7.124)

Sec. 74-145. Transfer of license.

No sale or transfer of the city system shall be effective unless the vendee, assignee, or lessee has filed in the office of the city clerk an instrument, duly executed, reciting the fact of such sale, assignment, or lease, accepting the terms of this article and agreeing to perform all the conditions thereof.

(Code 1989, § 7.125)

Sec. 74-146. Programming standards.

The licensee shall carry on coaxial cable all local television stations, present and future, without degradation to signal and without duplicating regularly scheduled local broadcasting programs in a period of 15 days prior to or 15 days after such local broadcast. The CATV system shall not originate any program

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other than time, weather, and music on any cable channel unless such program shall be of a civic nature. The CATV system shall not interrupt or interfere with the regular programming of any originating station carried on the cable except to eliminate duplication as stated in this section.

(Code 1989, § 7.126)

Sec. 74-147. Indemnification regarding programming disputes.

Each applicant for a license under this article shall in his application agree to save the city harmless from all loss sustained by the city on account of any suit, judgment, execution, claim, or demand whatsoever resulting from a dispute over programming. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any such improper or illegal program origination or duplication on the part of the licensee.

(Code 1989, § 7.127)

Sec. 74-148. Master antenna construction standards.

The licensee shall agree to construct that portion of the master antenna network erected in the city in accordance with the state construction code.

(Code 1989, § 7.128)

Sec. 74-149. Availability of facilities.

The licensee shall supply his facilities to all residents of the city who may request this service where there is a population density of 50 homes per mile of system or more, and shall maintain a centrally located business office open at all reasonable business hours to all persons in the city who desire the services of the licensee.

(Code 1989, § 7.129)

Sec. 74-150. Color television.

Should it be necessary to make special provision for the transmission of color television, the licensee shall at his own expense make any changes required.

(Code 1989, § 7.130)

Sec. 74-151. Limitation on service to system.

The services performed pursuant to licenses issued under this article shall not include the performance of repairing, servicing, or selling television sets or television antennas, nor shall the licensee recommend service by others except as directly related to cable installation and/or connection.

(Code 1989, § 7.131)

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Sec. 74-152. License required.

No person shall own or operate a community antenna television system in the city except by license issued pursuant to this article. The clerk shall issue a CATV license only upon receipt of an application which complies with all of the requirements of this article.

(Code 1989, § 7.132)

Sec. 74-153. Suspension or revocation of licenses.

Licenses issued under this article shall be subject to suspension and revocation in the manner prescribed in chapter 22, article II. Any failure by the licensee to properly perform any of the conditions or terms of this article shall be cause for the revocation of his license and all rights thereunder. The clerk shall report any noncompliance in writing to the city council, which, upon due notice to the licensee and after reasonable opportunity to place himself in compliance and to be heard on the charge of noncompliance, may revoke such license. After notice to the licensee, each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as prescribed in section 1-7.

(Code 1989, § 7.133)

Secs. 74-154—74-190. Reserved.

ARTICLE IV. USE OF PUBLIC RIGHTS-OF-WAY

[Sec. 74-191. Definitions.](#)

[Sec. 74-192. Purpose.](#)

[Sec. 74-193. Conflict.](#)

[Sec. 74-194. Compliance.](#)

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[Sec. 74-198. Permit required.](#)

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[Sec. 74-201. Conduit or utility poles.](#)

[Sec. 74-202. Route maps.](#)

[Sec. 74-203. Repair of damage.](#)

[Sec. 74-204. Establishment and payment of maintenance fee.](#)

[Sec. 74-205. Modification of existing fees.](#)

[Sec. 74-206. Savings clause.](#)

[Sec. 74-207. Use of funds.](#)

[Sec. 74-208. Annual report.](#)

[Sec. 74-209. Cable television operators.](#)

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[Sec. 74-210. Existing rights.](#)

Sec. 74-191. Definitions.

- (a) 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:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (MCL 484.3101 et seq.).

City council means the city council of the city 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.

Permit means a nonexclusive permit issued pursuant to the act and this article to a telecommunications provider to use the public rights-of-way in the city for its telecommunications facilities.

- (b) All other terms used in this article shall have the same meaning as defined or as provided in the act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to section 3 of the act (MCL 484.3103).

MPSC means the Michigan Public Service Commission in the state 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. The term "public right-of-way" does not include a federal, state, or private right-of-way.

Telecommunication facilities and facilities mean 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 and 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 USC 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 mean those terms as defined in section 102 of the Michigan telecommunications act, (MCL 484.2102). The term "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 USC 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 article only, a provider also includes all of the following:

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

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(Ord. No. 249, § 74-203, 11-4-2002)

Cross reference— Definitions generally, § 1-2.

Sec. 74-192. Purpose.

The purposes of this article 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 (MCL 484.3101 et seq.) ("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.

(Ord. No. 249, § 74-201, 11-4-2002)

Sec. 74-193. Conflict.

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

(Ord. No. 249, § 74-202, 11-4-2002)

Sec. 74-194. Compliance.

The city hereby declares that its policy and intent in adopting this article is to fully comply with the requirements of the act, and the provisions of this article 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:

- (1) Exempting certain route maps from the Freedom of Information Act, (MCL 15.231 to 15.246), as provided in section 74-198(c);
- (2) Allowing certain previously issued permits to satisfy the permit requirements of this article, in accordance with section 74-198(f);
- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the application fee, in accordance with section 74-198(g);
- (4) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with section 74-199(a);
- (5) Notifying the MPSC when the city has granted or denied a permit, in accordance with section 74-199(a);
- (6) Not unreasonably denying an application for a permit, in accordance with section 74-199(a);
- (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 74-199(b);
- (8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with section 74-199(c);

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- (9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with section 74-199(d);
- (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 74-200;
- (11) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this article, in accordance with section 74-205;
- (12) Submitting an annual report to the authority, in accordance with section 74-208; and
- (13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 74-209.

(Ord. No. 249, § 74-217, 11-4-2002)

Sec. 74-195. Reservation of police powers.

Pursuant to section 15(2) of the article (MCL 484.3115(2)), this article 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.

(Ord. No. 249, § 74-218, 11-4-2002)

Sec. 74-196. 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 for violations under this article as provided by this Code.

(Ord. No. 249, § 74-220, 11-4-2002)

Sec. 74-197. Municipal civil infraction.

A person who violates any provision of this article or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to appropriate civil infraction fines. Nothing in this section shall be construed to limit the remedies available to the city in the event of a violation by a person of this article or a permit.

(Ord. No. 249, § 74-221, 11-4-2002)

Sec. 74-198. 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 article.
- (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 (MCL 484.3106(1)). 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. Upon receipt, the city clerk shall make one copy of the application and distribute a copy to the department of public works. Applications shall be complete and include all

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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 (MCL 484.3106(5)).

- (c) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contains trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act (MCL 15.231 to 15.246) pursuant to section 6(5) of the act (MCL 484.3106(5)), the telecommunications provider shall prominently so indicate on the face of each map.
- (d) *Application fee.* Except as otherwise provided by the act, the application shall be accompanied by a one-time nonrefundable application fee in the amount set forth in the annual fee resolution adopted by the city council.
- (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 requests 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 (MCL 484.3106(2)).
- (f) *Previously issued permits.* Pursuant to section 5(1) of the act (MCL 484.3105(1)), authorizations or permits previously issued by the city under section 251 of the Michigan telecommunications act (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 requirements of this article.
- (g) *Existing providers.* Pursuant to section 5(3) of the act (MCL 484.3105(3)), 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 (MCL 484.2251), shall submit to the city an application for a permit in accordance with the requirements of this article. Pursuant to section 5(3) of the act (MCL 4.3105(3)), a telecommunications provider submitting an application under this subsection is not required to pay the application fee required under subsection (d) of this section. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the authority, as provided in section 5(4) of the act (MCL 484.3105(4)).

(Ord. No. 249, § 74-204, 11-4-2002)

Sec. 74-199. 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 (MCL 484.3115(3)), the city manager shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under section 74-198(b) for access to a public right-of-way within the city. Pursuant to section 6(6) of the act (MCL 484.3106(6)), 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 (MCL 484.3106(1), 484.3106(2), 484.3115).

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- (c) *Conditions.* Pursuant to section 15(4) of the act (MCL 484.3115(4)), 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 (MCL 484.3115(3)), and without limitation on subsection (c) of this section, 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.

(Ord. No. 249, § 74-205, 11-4-2002)

Sec. 74-200. 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 permit as required under chapter 62 for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. No. 249, § 74-206, 11-4-2002)

Sec. 74-201. Conduit or utility poles.

Pursuant to section 4(3) of the act (MCL 484.3104(3)), obtaining a permit or paying the fees required under the act or under this article does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 249, § 74-207, 11-4-2002)

Sec. 74-202. Route maps.

Pursuant to section 6(7) of the act (MCL 484.3106(7)), 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 telecommunications facilities to both the MPSC and to the city. The route maps should be in paper and electronic format unless and until the MPSC determines otherwise, in accordance with section 6(8) of the act (MCL 484.3106(8)).

(Ord. No. 249, § 74-208, 11-4-2002)

Sec. 74-203. Repair of damage.

Pursuant to section 15(5) of the act (MCL 484.3115(5)), 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.

(Ord. No. 249, § 74-209, 11-4-2002)

PART II - CODE OF ORDINANCES

Chapter 74 TELECOMMUNICATIONS

Sec. 74-204. Establishment and payment of maintenance fee.

In addition to the nonrefundable application fee paid to the city set forth in section 74-198(d), a telecommunications provider with telecommunications facilities in the city's public rights-of-way shall pay an annual maintenance fee to the authority pursuant to section 8 of the act (MCL 484.3108).

(Ord. No. 249, § 74-210, 11-4-2002)

Sec. 74-205. Modification of existing fees.

In compliance with the requirements of section 13(1) of the act (MCL 484.3113(1)), 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 (MCL 484.3113(4)), 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 (MCL 484.3108). The city shall provide each telecommunications provider affected by the fee with a copy of this article, in compliance with the requirement of section 13(4) of the act (MCL 484.3113(4)). 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 and intent, and upon application by a provider or discovery by the city, shall be promptly refunded as having been charged in error.

(Ord. No. 249, § 74-211, 11-4-2002)

Sec. 74-206. Savings clause.

Pursuant to section 13(5) of the act (MCL 484.3113(5)), if section 8 of the act (MCL 484.3108) is found to be invalid or unconstitutional, the modification of fees under section 74-205 shall be void from the date the modification was made.

(Ord. No. 249, § 74-212, 11-4-2002)

Sec. 74-207. Use of funds.

Pursuant section 9(4) of the act (MCL 484.3109(4)), all amounts received by the city from the authority shall be used by the city solely for rights-of-way related purposes.

(Ord. No. 249, § 74-213, 11-4-2002)

Sec. 74-208. Annual report.

Pursuant to section 10(5) of the act (MCL 484.3110(5)), the city manager shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.

(Ord. No. 249, § 74-214, 11-4-2002)

PART II - CODE OF ORDINANCES

Chapter 74 TELECOMMUNICATIONS

Sec. 74-209. Cable television operators.

Pursuant to section 13(6) of the act (MCL 484.3113(6)), 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 the act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. No. 249, § 74-215, 11-4-2002)

Sec. 74-210. Existing rights.

Pursuant to section 4(2) of the act (MCL 484.3104(2)), except as expressly provided in this article with respect to fees, this article 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.

(Ord. No. 249, § 74-216, 11-4-2002)