

Chapter 36

TELECOMMUNICATIONS*

* **State Law References:** Michigan telecommunications act, MCL 484.2101 et seq.; metropolitan extension telecommunications right-of-way oversight act, MCL 484.3101 et seq.; Michigan broadband development authority act, MCL 484.3201 et seq.; uniform video services local franchise act, MCL 484.3301 et seq.

Article I. In General

Secs. 36-1--36-18. Reserved.

Article II. Use of Rights-of-Way by Telecommunications Providers

Sec. 36-19. Purpose.
Sec. 36-20. Conflict.
Sec. 36-21. Definitions.
Sec. 36-22. Permit--Required; application; fee.
Sec. 36-23. Same--Issuance.
Sec. 36-24. Construction/engineering permit.
Sec. 36-25. Conduit or utility poles.
Sec. 36-26. Route maps.
Sec. 36-27. Repair of damage.
Sec. 36-28. Establishment and payment of maintenance fee.
Sec. 36-29. Modification of existing fees.
Sec. 36-30. Savings clause.
Sec. 36-31. Use of funds.
Sec. 36-32. Annual report.
Sec. 36-33. Cable television operators.
Sec. 36-34. Existing rights.
Sec. 36-35. Compliance.
Sec. 36-36. Reservation of police powers.
Sec. 36-37. Authorized city officials.
Sec. 36-38. Penalty.

ARTICLE I.

IN GENERAL

Secs. 36-1--36-18. Reserved.

ARTICLE II.

USE OF RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS*

* **State Law References:** Metropolitan extension telecommunications right-of-way oversight act, MCL 484.3101 et seq.

Sec. 36-19. 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, Public Act No. 48 of 2002 (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. 02-03, § 1, 11-1-2002)

Sec. 36-20. Conflict.

Nothing in this article shall be construed in such a manner as to conflict with the Act or other applicable law.
(Ord. No. 02-03, § 2, 11-1-2002)

Sec. 36-21. 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, Public Act No. 48 of 2002 (MCL 484.3101 et seq.).

City council means the city council of the City of Grayling 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 designee.

Permit means a non-exclusive 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.

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.

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 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. The term "telecommunication facilities" or "facilities" does 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, 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 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 ordinance 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.

(Ord. No. 02-03, § 3, 11-1-2002)

Sec. 36-22. Permit--Required; application; fee.

(a) *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. 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 mayor. 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 (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 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 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, authorizations or permits previously issued by the city under Section 251 of the Michigan telecommunications act, Public Act No. 179 of 1991 (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, 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, Public Act No. 179 of 1991 (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, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 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. 02-03, § 4, 11-1-2002)

Sec. 36-23. Same--Issuance.

(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 36-22(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), (2), 484.3115).

(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. 02-03, § 5, 11-1-2002)

Sec. 36-24. 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 for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.
(Ord. No. 02-03, § 6, 11-1-2002)

Sec. 36-25. 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. 02-03, § 7, 11-1-2002)

Sec. 36-26. 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 format unless and until the MPSC determines otherwise, in accordance with section 6(8) of the Act (MCL 484.3106(8)).
(Ord. No. 02-03, § 8, 11-1-2002)

Sec. 36-27. 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. 02-03, § 9, 11-1-2002)

Sec. 36-28. Establishment and payment of maintenance fee.

In addition to the nonrefundable application fee paid to the city set forth in section 36-22(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. 02-03, § 10, 11-1-2002)

Sec. 36-29. 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. 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. 02-03, § 11, 11-1-2002)

Sec. 36-30. Savings clause.

Pursuant to section 13(5) of the Act (MCL 484.3113(5)), if section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under section 36-29 shall be void from the date the modification was made.

(Ord. No. 02-03, § 12, 11-1-2002)

Sec. 36-31. Use of funds.

Pursuant to section 10(4) of the Act (MCL 484.3110(4)), 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 Public Act No. 51 of 1951 (MCL 247.651 et seq.).

(Ord. No. 02-03, § 13, 11-1-2002)

Sec. 36-32. 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. 02-03, § 14, 11-1-2002)

Sec. 36-33. 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 the effective date of the ordinance from which this article is derived, 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. 02-03, § 15, 11-1-2002)

Sec. 36-34. Existing rights.

Pursuant to section 4(2) of the Act (MCL 484.3104(2)), except as expressly provided herein 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. 02-03, § 16, 11-1-2002)

Sec. 36-35. Compliance.

The city hereby declares that its policy and intent in adopting the ordinance from which this article is derived 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:

- (1) Exempting certain route maps from the freedom of information act, Public Act No. 442 of 1976 (MCL 15.231 et seq.), as provided in section 36-22(c);
- (2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with section 36-22(f);
- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500.00 application fee, in accordance with section 36-22(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 36-23(a);
- (5) Notifying the MPSC when the city has granted or denied a permit, in accordance with section 36-23(a);
- (6) Not unreasonably denying an application for a permit, in accordance with section 36-23(a);
- (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 36-23(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 36-23(c);
- (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 36-23(d);
- (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 36-24;
- (11) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this article, in accordance with section 36-29;
- (12) Submitting an annual report to the authority, in accordance with section 36-32; and
- (13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in

accordance with section 36-33.
(Ord. No. 02-03, § 17, 11-1-2002)

Sec. 36-36. Reservation of police powers.

Pursuant to section 15(2) of the Act (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. 02-03, § 18, 11-1-2002)

Sec. 36-37. Authorized city officials.

The city manager or his designee is hereby designated as the authorized city official to issue municipal civil infraction citations directing alleged violators to appear in court for violations under this article as provided by chapter 20, article II, pertaining to municipal civil infractions.
(Ord. No. 02-03, § 20, 11-1-2002)

Sec. 36-38. Penalty.

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 the schedule of civil fines as established in section 20-65. 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. 02-03, § 21, 11-1-2002)