

to ensure distribution of funds from the State under the Metropolitan Extension Telecommunications Right-of-Way Oversight Act, Keiffer seconded by Brown moved to pass Emergency:

ORDINANCE NUMBER FIFTY NINE

AN ORDINANCE TO PROVIDE FOR AND REGULATE ACCESS TO AND ONGOING USE OF PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS FOR THEIR TELECOMMUNICATIONS FACILITIES WHILE PROTECTING THE PUBLIC HEALTH, SAFETY, AND WELFARE AND EXERCISING REASONABLE CONTROL OF THE PUBLIC RIGHTS-OF-WAY IN COMPLIANCE WITH THE METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT (ACT No. 48 of the PUBLIC ACTS OF 2002) ("Act") AND OTHER APPLICABLE LAW, AND TO ENSURE THAT THE CITY QUALIFIES FOR DISTRIBUTIONS UNDER THE ACT BY MODIFYING THE FEES CHARGED TO PROVIDERS AND COMPLYING WITH THE ACT.

THE CITY OF CARSON CITY ORDAINS:

CHAPTER 59.1 ESTABLISHMENT OF ORDINANCE

59.101 Short Title. This Ordinance shall be known and cited by its short title as "The TELECOMMUNICATIONS ORDINANCE".

59.102 Authority and Purpose. Pursuant to Section 14.2 of the City Charter, it is the purpose of this Ordinance to provide that the City of Carson City shall comply with Public Act 48 of 2002 relating to permits for telecommunications companies to use public rights-of-way.

59.103 Purpose. The purpose of this Ordinance is to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act (ACT No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the City of Carson City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act, and to prescribe penalties for the violation thereof and to repeal all other ordinances in conflict therewith.

CHAPTER 59.2 DEFINITIONS

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

59.202 City. City means the City of Carson City.

59.203 City Council. City Council means the Carson City Council of the City of Carson City 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.

59.204 City Administrator. City Administrator means the City Administrator of the City of Carson City or his or her designee.

59.205 Permit. Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities. All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

59.206 Authority. Authority means the Metropolitan Extension Telecommunications Right-of-Way Oversight Authority created pursuant to Section 3 of the Act.

59.207 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.

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

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

59.210 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. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile services as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio services in 47 CFR 20.3, and services provided by any wireless, two-way communication device.

59.211 Telecommunications Provider, Provider and Telecommunications Services. Means those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio

service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

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

CHAPTER 59.3
PERMIT REQUIRED

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

59.302 Application. Telecommunications providers shall apply for a permit on an application form approved by MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Comptroller, one copy with the City Administrator, and one copy with the City Attorney. Upon receipt, the City Comptroller shall make two copies of the application and distribute one copy to the Director of the City Department of Public Works. 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.

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

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

59.305 Additional Information. The City Administrator may request an applicant to submit such additional information which the City Administrator deem 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 Administrator. 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.

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

59.307 Existing Providers. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this section is not required to pay the \$500.00 application fee required under section 59.304 above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

CHAPTER 59.4 **ISSUANCE OF A PERMIT**

59.401 Approval or Denial. The authority to approve or deny an application for a permit is hereby delegated to the City Administrator. Pursuant to Section 15(3) of the Act, the City Administrator shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 59.302 of this Ordinance for access to a public right-of-way within the City. Pursuant to 6(6) of the Act, the City Administrator shall notify the MPSC when the City Administrator 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 Administrator shall not unreasonably deny an application or permit.

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

59.403 Conditions. Pursuant to Section 15(4) of the Act, the City Administrator may impose conditions on the issuance of a

59.403 Conditions. Pursuant to Section 15(4) of the Act, the City Administrator 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.

59.404 Bond Requirement. Pursuant to Section 15(3) of the Act, and without limitation of Section 59.403 above, the City Administrator 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.

CHAPTER 59.5
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 by this Chapter, for construction within the public rights-of-way. No fee shall be charged for such construction or engineering permit.

CHAPTER 59.6
CONDUIT OR UTILITY POLES

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

CHAPTER 59.7
ROUTE MAPS

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

CHAPTER 59.8
REPAIR OF DAMAGE

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as

authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

CHAPTER 59.9
ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE

In addition to the non-refundable application fee paid to the City set forth in Section 59.304 above, 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.

CHAPTER 59.10
MODIFICATION OF EXISTING FEES

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

CHAPTER 59.11
SAVINGS CLAUSE

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Chapter 59.10 of this Ordinance shall be void from the date the modification was made.

CHAPTER 59.12
USE OF FUNDS

Pursuant to Section 10(4) of the Act, all amounts received by the City from Authority shall be used by the City solely for rights-of-way related purposes. Depositing the amounts received into the Major Street Fund and/or Local Street Fund, maintained by the City under Act No.51 of the Public Acts of 1951, would help ensure compliance with this requirement of the Act.

CHAPTER 59.13
ANNUAL REPORT

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

CHAPTER 59.14
CABLE TELEVISION OPERATORS

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

CHAPTER 59.15
EXISTING RIGHTS

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

CHAPTER 59.16
COMPLIANCE

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



- A. Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 59.303 of this ordinance;
- B. Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 59.305 of this Ordinance;
- C. Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 59.306 of this Ordinance;
- D. Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to usage of a public right-of-way within the City, in accordance with Section 59.401 of this Ordinance;
- E. Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 59.401 of this Ordinance;
- F. Not reasonably denying an application for a permit, in accordance with Section 59.401 of this Ordinance;
- G. Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 59.402 of this Ordinance;
- H. Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 59.403 of this Ordinance;
- I. Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 59.404 of this Ordinance;
- J. Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Chapter 59.5 of this Ordinance;
- K. Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Chapter 59.10 of this Ordinance;
- L. Submitting an annual report to the Authority, in accordance with Chapter 59.13 of this Ordinance; and
- M. Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Chapter 59.14 of this Ordinance.



CHAPTER 59.17
RESERVATION OF POLICE POWERS

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

CHAPTER 59.18
FAILURE TO COMPLY WITH ORDINANCE

59.1801 Municipal Civil Infraction. A person who violates any provision of Ordinance, including, without limitation, failure or refusal to abate a violation after having been given notice of the same in a notice or order to decess, is responsible for a municipal city infraction, subject to payment of a civil fine of not less than \$50.00 or more than \$500.00, plus costs and other sanctions, for each infraction. The City Police Department is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court).

59.1802 Injunctive relief. For any violation of this Ordinance which may be deemed a nuisance per se. In addition to any remedy available at law, upon the request of the City Administrator and or the City Police, the City Attorney may bring an action for an injunction or other process against a person, to restrain, prevent or abate any violation of this Ordinance.

CHAPTER 59.19
SEVERABILITY

Should any part or provision of this Ordinance be declared invalid or unenforceable by any court of competent jurisdiction, such invalid or unenforceable part or provision shall not affect the validity or enforceability of the remainder of the Ordinance, if the remainder thereof can be given effect without such part or provision thus declared to be invalid or unenforceable.

CHAPTER 59.20
AUTHORIZED CITY OFFICIALS

The City Administrator or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations (directly alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter

violations bureau) for violations under this ordinance as provided by the City Code.

CHAPTER 59.21
CONFLICTING ORDINANCES AND AMENDMENTS SUPERSEDED

Any City ordinance and/or amendments thereto or resolutions that are in conflict or parts thereof which conflict with any terms of this ordinance are hereby rescinded. In case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which proceed each section or subsection of the ordinance are for convenience and reference only and shall not be taken into consideration of any construction or interpretation of any of the provisions of this ordinance.

CHAPTER 59.22
EFFECTIVE DATE AND PUBLICATION

Pursuant to Section 7.3(d) of the City Charter of the City of Carson City this Ordinance is declared an emergency ordinance which shall be effective immediately upon enactment and upon publication of the Ordinance in the Greenville Daily News, with a subsequent publication to be in the Carson City Gazette.

CERTIFICATION

We the undersigned, as Mayor and City Comptroller of the City of Carson City, Michigan, do hereby certify that this Ordinance Number 59 of the City of Carson City, was introduced at a regular meeting of the City Council held on December 23, 2003, and was thereafter adopted as an emergency Ordinance, by a vote of Six (6) for; Zero (0) against; Zero (0) abstaining; and Zero (0) being absent.



Daniel C. Herald, Mayor



Janet Kelly, City Comptroller

