

RIGHT-OF-WAY ORDINANCE
ORDINANCE NO. 240

AN ORDINANCE amending the Township of Ohio Code of Ordinances by adding a new Chapter entitled "Right-of-Way Ordinance."

WHEREAS, the Township of Ohio has acquired, constructed and maintained public rights-of-way, including paved streets, roads, alleys, bridges, green space and other public places to promote the general health, safety, welfare and convenience of its citizens; and

WHEREAS, the aforesaid rights-of-way are valuable public properties acquired, constructed and maintained by the Township of Ohio at significant expense to the Township of Ohio's taxpayers and the right to use said rights-of-way is a valuable property right; and

WHEREAS, it is in the public interest for the Township to exercise its legal right and responsibility to manage the public rights-of-way and to obtain reasonable compensation, on a competitively neutral and non-discriminatory basis, for the use of such rights-of-way; and

WHEREAS, telecommunications providers and other users of the public rights-of-way locate equipment within said rights-of-way to ensure that all citizens have access to a full range of telecommunications services; and

WHEREAS, the health, safety, welfare and convenience of the citizens may be adversely affected by work in the public rights-of-way and the placement of equipment in said rights-of-way, and the Township of Ohio seeks to minimize potential safety hazards, congestion, visual blight, inconvenience and other adverse effects on the public rights-of-way; and

WHEREAS, the placement of equipment in the public rights-of-way also causes an increase in the cost of maintaining, preserving, repairing and inspecting the Township of Ohio property.

NOW THEREFORE, the Township of Ohio hereby declares its intent to manage and regulate use of the public rights-of-way by telecommunications providers in order to protect the health, safety, welfare and convenience of its citizens.

Section 1. Definitions.

Unless the context specifically indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:

- (1) "Applicant" means the Person who has applied for a Right-of-Way Permit or a Construction Permit.
- (2) "Application" means the form prescribed by the Township of Ohio which the Applicant must complete in order to obtain a Right-of-Way Permit.
- (3) "Construction" means the building, erection, or installation in, on or under a Right-of-Way. It does not include maintenance or repair of equipment in a Right-of-Way or a single line extension from equipment in the Right-of-Way.
- (4) "Construction Permit" means the document that must be obtained before a Person may perform construction in a Right-of-Way.
- (5) "Emergency" means an interruption of service or a condition that poses a clear and immediate danger to life or health, or significant loss of property.
- (6) "Equipment" means any tangible property located or proposed to be located in a Right-of-Way, including, but not limited to, wires, lines, cables, conduits, pipes, supporting structures or other facilities.
- (7) "In" when used in conjunction with Rights-of-Way means over, above, in, within, on or under a Right-of-Way.
- (8) "Maintenance" means work of a minor nature that will keep an existing condition from failure to decline.
- (9) "Permit Holder" means the Person obtaining a Right-of-Way Permit.
- (10) "Person" means any individual, firm, partnership, association, corporation, company or other business entity.
- (11) "Rights-of-Way" means the surface and space in, on, above and below any real property in which the Township of Ohio has an interest in law or in equity, including, but not limited to, any public street, boulevard, avenue, road, highway, easement, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, green space or any other place.

- (12) "Restore" or "restoration" means the process by which a Right-of-Way is returned to a state that is as good or better as its condition before construction.
- (13) "Right-of-Way Permit" or "Permit" means a written agreement granted by the Township of Ohio to an Applicant for use of the Rights-of-Way in the Township of Ohio for wires, lines, cables, conduits, pipes, supporting structures and other facilities.
- (14) "Telecommunications Services" means the services offered to customers involving the transmission of video, data and/or voice communications and/or content, both active and interactive, and associated usage.
- (15) "Telecommunications System" means a system used or to be used to provide Telecommunication Services.
- (16) "Underground equipment" means all equipment that is located wholly or partially underneath a Right-of-Way.

Section 2: Requirement for a Right-of-Way Permit.

2.1 No Person shall enter upon or occupy any Right-of-Way for the purpose of installing, constructing, maintaining or operating a Telecommunications System without first having obtained a Right-of-Way Permit. Any person maintaining or operating a Telecommunications System as of the Effective Date of this Ordinance shall also obtain a Right-of-Way Permit.

2.2 Before a Right-of-Way Permit is issued, the holder of or Applicant for a Right-of-Way Permit shall have applied for any and all regulatory approvals, permits or authorizations from the appropriate federal, state and local authorities, if required. Upon the request of the Township of Ohio, the Applicant shall submit written evidence of its applications for or receipt of all such approvals, permits or authorizations.

2.3 Nothing in this Ordinance shall be construed as a waiver of any ordinances or regulations of the Township of Ohio or the Township of Ohio's right to require prospective or current Right-of-Way Permit Holders to secure and remit payment for any and all required permits or authorizations.

Section 3: Application for a Right-of-Way Permit.

3.1 A Right-of-Way Permit shall only be granted after an Applicant has completed an Application in the form that has been prescribed by the Township of Ohio, which form may be revised from time to time. Upon request, an Applicant shall be provided with a copy of the then current Application for a Right-of-Way Permit. The Application shall request information regarding the Applicant's proposed or actual physical use and

occupation of the Rights-of-Way. Specifically, the Application shall request: 1) a brief description of the telecommunications service or services to be offered or provided in or through the Township of Ohio; 2) specific information regarding the equipment it proposes to place or currently maintains in the Rights-of-Way; 3) the expected physical burden that such equipment will place or does place on the Rights-of-Way; and 4) whether the equipment will or does have a detrimental effect on public safety as it relates to the Rights-of-Way. If the completed Application does not fully provide such requested information, the Township of Ohio may request such additional information as is necessary to enable it to make a determination regarding the physical use and occupation of the Rights-of-Way by the Applicant. The Application may request less information from a Permit Holder applying for a renewal of a Right-of-Way Permit.

3.2 Upon submission of a fully completed Application to the Township of Ohio and the accompanying fee, the Township of Ohio shall review the Application as follows: For new Applicants, the Township of Ohio shall grant or deny such Applications within twenty (20) business days. For existing Permit Holders applying to a renewal of their Permits, who are not under suspension in accordance with Section 4 below, the Township of Ohio shall grant or deny such Applications within ten (10) business days. If the Township of Ohio fails to grant or reject such Application within the time periods specified above, the Application shall be deemed approved. In each case, the Township of Ohio shall review the Application to determine whether such use would have a detrimental effect on public safety as it relates to the Rights-of-Way or would place an undue physical burden on the Rights-of-Way.

3.3 In considering an Application, the Township of Ohio may use such outside experts as it deems necessary. In the event the Township of Ohio deems it necessary to employ an outside expert to advise the Township with respect to a particular Application, the reasonable costs of such expert shall be borne by the Applicant.

Section 4. Duration and Suspension of Right-of-Way Permit.

4.1 The Right-of-Way Permit shall be issued for a period of one year. Permit Holders may apply for a renewal of a Right-of-Way Permit prior to its expiration. The Township of Ohio may suspend such Right-of-Way Permit in the event any one or more the following has occurred:

- a. The Permit Holder shall have caused damage to Township of Ohio property or the Right-of-Way without the prior consent of the Township of Ohio (except in the case of an Emergency) and without completing proper Restoration;
- b. The Permit Holder or the Permit Holder's equipment in the Right-of-Way has had a detrimental effect on public safety as it relates to the Rights-of-Way;
- c. The Permit Holder failed to pay any of the fees required under this Ordinance;

- d. The Permit Holder failed to comply with construction standards in accordance with the provisions contained in Section 8 below;
- e. The Permit Holder failed to indemnify, hold harmless and insure the Township of Ohio in accordance with the provisions contained in Section 9 below.

4.2 If the Township of Ohio has reason to believe that one or more of the above events has occurred, it shall notify the Permit Holder in writing. The Permit Holder shall have twenty (20) business days to cure the violation, unless the Township of Ohio reasonably determines that the event is an Emergency, in which case the Township of Ohio may impose a shorter time period to cure the violation.

4.3 If the Permit Holder fails to cure the violation within the specified time period, the Township of Ohio shall be permitted to immediately suspend the Right-of-Way Permit. A suspension shall be brought to the attention of the Board of Supervisors at its next meeting at which time the Board of Supervisors shall be permitted to uphold or withdraw the suspension. The Permit Holder shall be provided an opportunity to be heard at such meeting.

Section 5: Requirement for a Construction Permit.

5.1 Except in the case of an Emergency, before commencing any construction in the Rights-of-Way, a Person shall submit to the Township of Ohio detailed plans of the proposed construction activity. Such plans shall include the type of construction activity, the equipment proposed to be installed or erected, the specific locations of the construction activity and the scheduled beginning and ending dates of all planned construction. Such plans shall also include the name(s), address(es) and experience of any and all subcontractors whom Applicant intends to utilize. Such information may be submitted concurrently with an Application for a Right-of-Way Permit.

5.2 Upon submission of all such information required in Section 5.1 above, the Township of Ohio shall review such information and either grant or deny a Construction Permit within twenty (20) business days. If the Township of Ohio fails to grant or deny the Construction Permit within such time period, the Permit shall be deemed granted. In each such case, the Township of Ohio shall review the information provided herein to determine whether such construction would have a detrimental impact on public safety as it relates to the Rights-of-Way. The Township of Ohio may impose conditions on the Construction Permit regulating the times, locations, and manner of construction to preserve effective traffic flow, prevent hazardous road conditions and/or minimize noise impacts.

Section 6: Fees and Expenses.

6.1 Each new Applicant for a Right-of-Way shall include with its Application (excluding expert costs) and managing the Rights-of-Way with respect to each Permit Holder. Such costs in managing the Rights-of-Way include, but are not limited to,

inspection costs , administrative costs, costs of maintaining the Rights-of-Way and costs of degradation of streets and Right-of-Way property. This fee will not be refunded in the event the Application is denied. If the Application is granted, the Application fee will apply to the full term of the Right-of-Way Permit of one year. If the Applicant applies for a Construction Permit concurrently with the Application for a Right-of-Way Permit, then the Application fee contained herein shall apply to both the Right-of-Way Permit and the Construction Permit.

6.2 Each existing Permit Holder applying for a renewal of its Right-of-Way Permit shall include with its Application an annual fee in the amount of Three Hundred (\$300.00) Dollars. This fee is directly related to the Township of Ohio's costs in managing the Rights-of-Way with respect to each Permit Holder. Such costs include, but are not limited to, inspection costs, administrative costs, costs of maintaining the Rights-of-Way and costs of degradation of streets and Right-of-Way property.

6.3 Each Applicant for a Construction Permit shall include with its Application an application fee in the amount of Two Hundred (\$200.00) Dollars. This fee is directly related to the Township of Ohio's costs in reviewing the application and determining time, place and manner restrictions on the construction activity. If the Application for a Construction Permit is denied, this fee shall not be refunded. If the Application is granted, then the Applicant shall pay, within thirty (30) days of the presentation of a statement, the Township of Ohio's actual costs based on the hourly rate established by Resolution of the Board of Supervisors. Such actual costs include, but are not limited to, costs of disruption and rerouting of traffic, inspection costs and administrative costs.

6.4 Extraordinary Expenses. In addition to the fees set forth above, a Permit Holder shall pay, within thirty (30) days of the presentation of a statement, any extraordinary or unusual expenses reasonably incurred by the Township of Ohio as a result of the Permit Holder's use of the Rights-of-Way, provided that the Township of Ohio notifies the Permit Holder of the expected expenses prior to them being incurred and provides the Permit Holder with an opportunity to mitigate such expenses. Examples of extraordinary or unusual costs include, but are not limited to, the cost of obtaining and operating a backhoe, dump truck or other heavy equipment used to repair the Right-of-Way, overtime or special pay for police officers or other emergency services. The statement of such expenses presented to the Permit Holder shall be directly related to the Township of Ohio's actual costs.

6.5 In the event that payment of any of the fees identified above is not made upon submission of the Application or by the date due, the Applicant or Permit Holder shall pay a late payment penalty of simple interest at ten (10%) percent annual percentage rate of the total amount past due. Such penalty shall be in lieu of any other monetary penalty. Acceptance of payment under this Section shall not in any way limit or waive the Township of Ohio's right to suspend or terminate the Permit according to the terms of this Ordinance.

Section 7: Management of the Rights-of-Way.

7.1 The Township of Ohio shall have the right to limit the placement of new or additional equipment in the Right-of-Way if there is insufficient space to reasonably accommodate all requests for occupy and use the Rights-of-Way. The Township of Ohio shall consider requests for occupying and using the Rights-of-Way in the order of receipt of fully completed Applications for Right-of-Way Permits. The Township of Ohio shall strive, to the extent possible, to accommodate all requests, but shall be guided by the physical condition of the Right-of-Way and whether such use would have a detrimental effect on public safety as it relates to the Right-of-Way.

7.2 The Township of Ohio shall have the right to monitor the Telecommunications Systems and the equipment related thereto located in the Rights-of-Way in order to prevent interference between and among such Systems and equipment.

7.3 A Permit Holder shall allow the Township of Ohio to make inspections of any part of the Permit Holder's Telecommunications System located in the Rights-of-Way at any time upon three (3) days notice, or, in case of an Emergency, upon demand.

Section 8: Construction Standards.

8.1 Whenever a Permit Holder or any of its subcontractors shall disturb any pavement, sidewalk or other public property in order to perform any underground activities, the Permit Holder will fully comply by registering with Pennsylvania's "One Call" system, pursuant to 73 P.S. §176 et seq. Each Permit Holder shall perform construction activity in a manner consistent and in compliance with the detailed plans it submitted to the Township of Ohio and all applicable federal, state and local laws and regulations.

8.2 Whenever a Permit Holder or any of its subcontractors shall cause damage to the Right-of-Way or to the Township of Ohio property in the Right-of-Way, the Permit Holder shall restore such a Right-of-Way or property within twenty (20) business days, weather permitting.

8.3 The Telecommunications System shall not endanger or interfere with the safety of persons or property within the Township of Ohio. All operating, maintenance, construction and repair personnel shall be thoroughly trained in the safe use of all equipment and in the safe operation of vehicles. Such personnel shall follow all safety procedures required by applicable federal, state and local laws and regulations. The Permit Holder shall routinely inspect and maintain all areas of the Telecommunications System so that conditions that could develop into safety hazards shall be corrected before they become a hazard.

8.4 Except in the case of an Emergency, at least three (3) days prior to the commencement of any construction activity, Permit Holder shall notify nearby residents of

such construction activity in a manner which is satisfactory to the Township of Ohio. The name of the Permit Holder shall be clearly disclosed to such residents.

8.5 All construction activity shall be performed in an orderly and workmanlike manner, and in close coordination with public utilities serving the Township of Ohio following accepted industry construction procedures and practices.

8.6 All wires, cables and other equipment shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundles with due respect for engineering considerations.

8.7 All wires, cables and other equipment shall be installed underground where required by municipal ordinance or regulation consistent with the same requirement being imposed on all other similarly situated companies, including public utilities.

Section 9: Liability and Indemnification.

9.1 A Permit Holder shall, at its sole cost and expense, indemnify and hold harmless the Township of Ohio, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising out of the Permit Holder's use or occupancy of the Rights-of-Way. A Permit Holder shall defend any actions or proceedings against the Township of Ohio in which it is claimed that personal injury, including death, or property damage was caused by the Permit Holder's use or occupancy of the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification. A Permit Holder shall not be required to indemnify and hold the Township of Ohio harmless for claims caused by the Township of Ohio's negligence, gross negligence or willful misconduct.

9.2 A Permit Holder shall at all times during the life of a Permit carry and require its subcontractors to carry liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the Township of Ohio as set forth in the Permit. A Permit Holder shall name the Township of Ohio as an additional insured on its liability insurance policies. All required insurance coverage shall provide for thirty (30) days notice to the Township of Ohio in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation.

Section 10: Reporting Requirements.

10.1 A Permit Holder shall annually provide the Township of Ohio, upon Application renewal of the Permit, or upon request, the current maps of the horizontal and vertical locations of its existing installations and a summary of all additions and deletions of equipment in the Rights-of-Way, unless no changes have occurred in the previous year.

if no charges have occurred in the previous year, Permit Holder shall so inform the Township of Ohio.

10.2 A Permit Holder shall submit to the Township of Ohio such reasonable information directly related to the Permit Holder's use and occupation of the Rights-of-Way as the Township of Ohio may request. All information provided to the Township of Ohio shall be maintained by the Township of Ohio as proprietary and confidential if such information is designated in good faith as such prior to the time it is provided to the Township of Ohio.

Section 11: Sale or Transfer of Rights of Permit Holder.

A Right-of-Way Permit may be transferred or assigned, upon thirty (30) days written notice to the Township of Ohio, provided that the transferee/assignee agrees in writing to comply with all the obligations and requirements contained in this Ordinance.

Section 12. Performance Bond.

A Permit Holder may be required, prior to construction, to obtain a performance bond in a reasonable amount set by the Township of Ohio based upon the construction cost of the equipment to be installed in the Rights-of-Way and the extent of the disturbance of such Rights-of-Way. The performance bond shall ensure the Permit Holder's faithful performance of its construction obligations. The Township of Ohio may reduce or cancel the bond requirement when construction is completed.

Section 13. Termination.

13.1 In addition to all other rights and powers reserved by the Township of Ohio, the Township of Ohio reserves the right to terminate a Permit and all rights and privileges of a Permit Holder for any of the following reasons:

- a. A Permit Holder fails, after thirty (30) days prior written notice, to comply with any of the provisions of the Permit or this Ordinance;
- b. A Permit Holder becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- c. All or part of a Permit Holder's facilities are sold under an instrument to secure a debt and are not redeemed by the Permit Holder within ninety (90) days from such sale;
- d. A Permit Holder attempts to, or does practice any fraud or deceit in its conduct or relations with the Township of Ohio under the Permit;
- e. The Township of Ohio condemns all of the property of a Permit Holder within the Township of Ohio by the lawful exercise of eminent domain;
- f. The Permit Holder abandons the Telecommunication System.

13.2 No termination shall be effective unless and until the Township of Ohio shall have adopted a Resolution setting forth the cause and reason for their termination and the effective date, which Resolution shall not be adopted without thirty (30) days prior notice to Permit Holder and an opportunity for the Permit Holder to be heard before the Board of Supervisors on the proposed Resolution.

Section 14: Removal.

14.1 Upon expiration or termination of the Permit, if the Permit is not renewed, the Permit Holder shall, upon sixty (60) days prior written notice to the Permit Holder, remove its equipment from the Rights-of-Way and shall restore said areas. If such removal is not completed within six (6) months of such notice, the Township of Ohio may deem any property not removed as abandoned and the Township of Ohio may remove it at the former Permit Holder's expense. In the event that the Permit Holder installed and/or operated any underground conduit or pipe which is six inches (6") or more in diameter, Permit Holder shall fill said conduit or pipe with material in a manner satisfactory to the Township of Ohio.

14.2 During the term of the Permit, if the Permit Holder decides to abandon or no longer use all or part of its Telecommunications System, it shall provide the Township of Ohio with written notice of its decision at least thirty (30) days prior to such decision, which notice shall describe the equipment and its location. The Township of Ohio shall have the right to require the Permit Holder to remove the equipment upon sixty (60) days prior written notice to the Permit Holder. If such removal is not completed within six (6) months of such notice, the Township of Ohio may remove it at the Permit Holder's expense.

15: Penalty.

If the Township of Ohio has reason to believe that the Permit Holder violated any of the terms of this Ordinance, it shall notify the Permit Holder in writing of the nature of the violation and the section of this Ordinance which it believes has been violated. The Permit Holder shall have twenty (20) business days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Township of Ohio may, in its reasonable judgment, extend the time period to cure. If the violation has not been cured within the time period allowed, it shall be subsequently punishable by a fine of up to One Hundred (\$100.00) Dollars per day until the violation is cured.

Section 16: Police Powers.

The Township of Ohio, by granting any Permit under this Ordinance, does not waive, lessen, impair or surrender the lawful police powers vested in the Township of Ohio under applicable federal, state and local laws pertaining to the regulation or use of the Rights-of-Way.

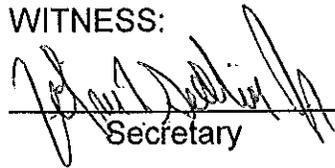
Section 17: Severability.

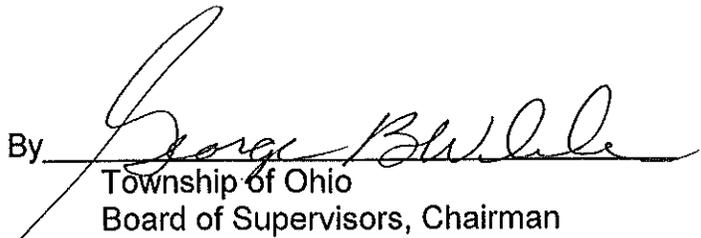
If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not render this Ordinance invalid.

Section 18: Equal Application.

The provisions of this Ordinance shall be imposed upon and enforce against all Persons requiring a Permit from the Township of Ohio.

WITNESS:


Secretary

By 
Township of Ohio
Board of Supervisors, Chairman

ADOPTED: March 12, 2001