

ORDINANCE NO. 1453

**AN ORDINANCE TO AMEND THE CODE OF
THE CITY OF SOUTHFIELD BY ADDING A
NEW TITLE WHICH NEW TITLE SHALL BE
DESIGNATED AS TITLE XIII OF SAID CODE**

TITLE XIII

CHAPTER 150. TELECOMMUNICATIONS

THE CITY OF SOUTHFIELD ORDAINS:

Section 1. The Code of the City of Southfield is amended by adding a new title which new title shall be designated as Title XIII of said Code, as follows:

ARTICLE I. PURPOSE

Section 13.1. Purpose.

The purpose of this Chapter is to regulate the access to and ongoing use of Public Rights-of-Way by Telecommunications Providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the Public Rights-of-Way pursuant to the City Charter, the Michigan Telecommunications Act (Act No. 216 of the Public Acts of 1995, as amended, being MCLA 484.2101 et seq.), other State statutes (including, without limitation, MCLA 247.183), and Article VII, § 29 of the 1963 Michigan Constitution by (1) minimizing disruption of the Public Rights-of-Way by regulating the access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and the construction and installation of facilities in the Public Rights-of-Way to provide Telecommunication Services, (2) ensuring that the City and the public are protected from liability for use of the Public Rights-of-Way by Telecommunications Providers, (3) providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by Telecommunications Providers, and (4) assisting Telecommunications Providers in understanding the City's requirements for use of the Public Rights-of-Way and providing a fair and non-discriminatory policy for permitting the use of the Public Rights-of-Way by such providers.

Section 13.2. Reservation of Rights.

The issuance of a Permit or Permits under this Chapter and the access to and use of the Public Rights-of-Way by a Telecommunications Provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

1. **Right to Require Franchise.** Article VII, § 29 of the 1963 Michigan Constitution and the City Charter require that all public utilities obtain a franchise to conduct a local business within the City. The applicability of this requirement to Telecommunications Providers may be challenged under Section 102(dd) of the Michigan Telecommunications Act which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be

unnecessary, the City hereby determines that Telecommunications Providers shall not be required at this time to obtain franchises for the transaction of local business within the City. Telecommunications Providers shall be required to obtain and maintain a Permit for access to and ongoing use of the Public Rights-of-Way and to otherwise comply with the terms of this Chapter. Such a Permit shall not constitute a franchise. The City reserves the right to require Telecommunications Providers to obtain a franchise in the future to transact local business within the City.

2. Rights Regarding Taking Claim. Certain cable or Telecommunications Providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities dispute that claim. The City believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment of the United States Constitution. The legal issues involved in such disputes have not been finally decided. The City desires to act on applications for Permits granting access to its Public Rights-of-Way at this time rather than wait for determination of these issues, provided this can be done without waiver or loss of any rights of the City or a Permittee. Therefore, notwithstanding any other provision hereof, a Permittee is not precluded by this Chapter from seeking relief from the fee provisions of Section 13.6 from any court or agency of competent jurisdiction. If a Permittee seeks such relief, the City reserves the right to assert a taking claim and to take all action it deems necessary in support thereof. Neither this Chapter nor the issuance or acceptance of a Permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the City or the Permittee in connection with these disputed issues, and the acceptance of a Permit constitutes an acknowledgment and agreement thereto by the Permittee.
3. Option to Obtain Consent Agreement. The City finds that legislative, legal and regulatory issues in connection with use of the Public Rights-of-Way by Telecommunications Providers and the resulting potential for litigation and delay are likely to have an adverse impact on the development of a healthy, competitive telecommunications infrastructure in the community. This would be detrimental to the City and its residents as well as to Telecommunications Providers. The issues affect, among other things, both the cost to Telecommunications Providers and compensation to the City for the maintenance and use of its Public Rights-of-Way. In order to promote certainty, encourage competition and avoid litigation, the City will, at the request and sole option of an applicant or Permittee, consider entering into a consent agreement for use of the Public Rights-of-Way for the provision of Telecommunications Services on terms and conditions mutually acceptable to the City and the Telecommunications Provider. It is the City's intent that such an agreement would satisfy the requirement for a Permit under this Chapter, and would include, among other things, a fee of up to five percent of the applicable gross revenues of the Telecommunications Provider, which would include the Permit fee; an extended term of up to 15 years; authorization to

conduct a local business in the City pursuant to Article VII, Section 29 of the 1963 Michigan Constitution; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A Permittee may request a consent agreement at any time.

ARTICLE II. DEFINITIONS

Section 13.3. Terms Defined.

The meaning of the terms used in this Chapter shall be as follows:

- (1) “Affiliate” and “Affiliated” means any entity Controlling, Controlled by or under common Control with a Permittee.
- (2) “City” means the City of Southfield.
- (3) “City Council ” means the City Council of the City of Southfield or its designee. This subsection does not authorize delegation of any decision or function that is required by law to be made by the City Council. In any case in which a hearing is held pursuant to this Chapter, the City Council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.
- (4) “City Administrator” means the City Administrator or his or her designee.
- (5) “Control,” “Controlling,” and “Controlled” mean effective control, by whatever means exercised, such as those described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Rcd 6828 (1993) at paragraphs 22-28 (adopting broadcast transfer of control standards as then in effect).
- (6) “Local Exchange Service” means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.
- (7) "Local Street" means any public road, street or highway included within the City of Southfield local street system, as determined by the State of Michigan, Department of Transportation, pursuant to and for purposes of P.A. 1951, NO.51.
- (8) "Major Street" means any public road, street, or highway included within the City of Southfield major street system, as determined by the State of Michigan, Department of Transportation pursuant to and for purposes of P.A. 1951, NO.51.
- (9) "Permit" means a non-exclusive permit issued pursuant to this Chapter for access to and ongoing use of Public Rights-of-Way by Telecommunications Providers for wires, poles, pipes, conduits, or other facilities designed or used to provide

Telecommunications Services. The term "Permit" does not include any other permits, licenses, or approvals required by the City or other governmental entities.

- (10) "Permittee" means a Telecommunications Provider which has been issued a Permit pursuant to this Chapter.
- (11) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- (12) "Public Rights-of-Way" means the public rights-of-way, easements, highways, streets, and alleys within the City.
- (13) "Telecommunications Act" means Act No. 216 of the Public Acts of 1995, as amended from time to time.
- (14) "Telecommunications Facilities" means a Telecommunications System, or any part thereof, including, without limitations, any wires, poles, pipes, conduits, or other facilities, which is or are situated within the Public Rights of Way.
- (15) "Telecommunications Provider" means a Person who provides one or more Telecommunications Services for compensation.
- (16) "Telecommunications Services" means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. "Telecommunications Services" does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.
- (17) "Telecommunications System" means facilities designed or used to provide Telecommunications Services.
- (18) "Utility Policy" shall mean the City of Southfield Department of Public Works, Utility Policy, dated March, 1998, as may be subsequently amended by the City from time to time.

ARTICLE III. PERMITS

Section 13.4. Permits.

1. **Permit Required.** No Person shall use the Public Rights-of-Way to provide Telecommunications Services without a Permit issued pursuant to this Chapter or a consent agreement under Section 13.2(3) of this Chapter. For purposes of this Chapter, use of the Public Rights-of-Way includes the installation, construction, maintenance, repair, or operation of a Telecommunications System within the Public Rights-of-Way. In addition, a Person providing Local Exchange Service or other local Telecommunications Services is using the Public Rights-of-Way for purposes of this Chapter whether such Person owns the facilities in the Public Rights-of-Way outright or obtains the use of or access to the facilities from a third

party under lease, contract, interconnection, or wholesale for retail or other similar arrangement. Failure to comply with the Permit requirement of this Section shall constitute a violation of this Chapter. A Person who violates this requirement shall comply with all requirements of this Chapter applicable to a Permittee and shall pay the annual fee plus late payment charges as provided by Section 13.6 for the time period in which the violator did not have a Permit plus the actual costs incurred by the City in enforcing this Chapter against the Person.

No Permit shall be issued to any Person who is in default to the City or who has failed to comply with the provisions of any other existing ordinance, rule, or regulation of the City, during the period of such default or failure to comply.

2. Consent Agreement. If a Telecommunications Provider negotiates a consent agreement with the City under the provisions of Section 13.2(3) and the City determines that the consent agreement substantially satisfies the obligations of a Telecommunications Provider under this Chapter, giving due regard to any special circumstances involving the Telecommunications Provider, the consent agreement will be deemed to satisfy the requirement of a Permit under this Chapter and under the Telecommunications Act. When a consent agreement is no longer in effect, the Telecommunications Provider shall be required to comply with all terms and conditions of this Chapter as it may be amended from time to time.

Section 13.5. Permit Application Procedures.

- (1) Application. A Telecommunications Provider shall apply for a Permit pursuant to this Chapter. The application shall be made on an application form provided by the City. Ten (10) copies of the application shall be filed with the City Clerk, and two (2) additional copies each shall simultaneously be filed with the City Attorney.
- (2) Required Information. In addition to other information required by the application form or otherwise required by the City (including, without limitation, the Utility Policy) or this Chapter, the application shall include, without limitation, the following information:
 - (a) The name and address of the applicant and each Person exercising Control over the applicant, and if the applicant or any Person or Persons exercising Control is not a natural Person each of its officers, directors, stockholders beneficially holding more than 10% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 10%.
 - (b) Copies of the most recent financial statements of the applicant.
 - (c) A description of (i) the applicant's existing and proposed Telecommunications System and Telecommunications Services in the City, (ii) the types of existing and proposed wires and other facilities in the Public Rights-of-Way, and (iii) a statement describing the type and

location of existing facilities in the Public Rights of Way to be utilized by the Telecommunications Provider and/or a statement describing the type and location of new facilities to be constructed in the Public Rights of Way.

- (d) A map setting forth the specific proposed location of the facilities in the Public Rights-of-Way. The map shall identify the location of above ground and underground facilities.
- (3) Application Fee. The application shall be accompanied by a non-refundable application fee in an amount calculated by multiplying: ten cents (\$.10) per lineal foot for underground Telecommunication Facilities proposed to be installed in the Public Rights of Way by the Telecommunications Provider; and three cents (\$.03) per lineal foot for aerial or overhead Telecommunications Facilities proposed to be installed in the Public Rights of Way by the Telecommunications Provider. The minimum application fee hereunder shall be Seventy Five (\$75.00) Dollars. This non-refundable application fee shall be designed to reimburse the City for the costs incurred by the City in reviewing an application for a Permit and issuance of a Permit in accordance with the procedures of this Chapter.
- (4) Administrative Completeness. An application shall not be deemed to be filed for purposes of the 90-day permit application review period in Section 251(3) of the Telecommunications Act unless and until the application is determined by the City Administrator to be administratively complete. A determination whether the application is administratively complete shall be made by the City Administrator within ten (10) business days after the application is received by the City. If the City Administrator determines that the application is not administratively complete, the City Administrator shall so advise the applicant in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.
- (5) Additional Information. The City Administrator may request an applicant to submit such additional information which the City Administrator deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Administrator. If the applicant fails to provide the requested additional information by the deadline established by the City Administrator, the 90-day period for acting on the application under Subsection (7) below shall be extended by the number of days after the deadline that the information was provided to the City Administrator.
- (6) Misleading Statements. A Person who provides information to the City in connection with a Permit application or any other matters under this Section 13.5 which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Chapter, and shall be subject to all remedies for violation of this Chapter and the City Code including, without limitation, denial of the requested action and Permit revocation pursuant to Section 13.13. Provided, however, prior to any revocation of a Permit, the City will give notice to a Permittee of the untrue statement or

omission, and provide the Permittee a seven (7) day notice to cure such defect. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Chapter.

- (7) Permit Approval or Denial. Within 75 days after the City Administrator determines that the application is administratively complete (subject to any adjustments for delays in providing additional information as provided in Subsection (5)), the City Council shall hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten (10) days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten (10) days before the public hearing. Any report or recommendation on the application obtained or prepared by the City Administrator shall be mailed to the applicant not less than ten (10) days before the public hearing. The applicant and any other interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the application. Following the public hearing, the City Council shall approve, approve with conditions, or deny the application within 90 days after the City Administrator determines that the application is administratively complete pursuant to subsection (d), subject to any adjustments for delays in providing additional information as provided in subsection (e). The City Council shall not unreasonably deny an application for a Permit. The failure of the City to comply strictly with the procedural requirements of this Section 13.5 for the review of Permit applications shall not invalidate the decision or proceedings of the City.
- (8) Conditions. The City Council may impose conditions on a Permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a bond by the Telecommunications Provider in an amount which shall not exceed the reasonable cost to ensure that the Public Rights-of-Way are returned to their original condition during and after the Telecommunications Provider's access and use.
- (9) Modification. The City Council may, in its discretion, grant a modification of a specific requirement of Sections 13.7, 13.8, 13.9 or 13.11 of this Chapter if the applicant requests such modification in its application for a Permit and if the applicant demonstrates that: 1) there are exceptional or extraordinary circumstances which warrant a modification, 2) the modification will not be detrimental to the public health, safety, and welfare, and 3) the modification will not impair the intent and purposes of this Chapter and its several Sections. The application shall describe the applicant's request for a modification and the reasons for the request with specificity. A modification granted by the City Council pursuant to this Section shall expire upon the expiration of the Permit or earlier if so determined by the City Council. A modification shall modify only those requirements expressly set forth in the approval of the City Council and shall not modify any other provisions of this Chapter. If a request for a modification is denied by the City Council, the Telecommunications Provider shall comply with all requirements of this Chapter without exception.

- (10) Waiver. The City Council shall grant a waiver of any requirement of this Chapter if an applicant or Permittee requests a waiver and the City Council finds that 1) unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or Permittee to provide any Telecommunications Service within the meaning of Section 253(a) of the Federal Telecommunications Act, 47 USC § 253(a), 2) the requirement is not within the scope of any state or local authority referenced in Section 253© of the Federal Telecommunications Act, 47 USC § 253(c), and 3) the requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers. A request for a waiver may be included in an application for a Permit. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request. If the request is made in connection with an application for a Permit, the provisions of Sections 13.5(4) through 13.5(7) shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in Section 13.5(7) for holding a public hearing and acting on an application are extended by 90 days. Sections 13.5(1), 13.5(3) and 13.5(6) shall apply to a waiver request that is not made in connection with a Permit application, and the request may be denied for violation of or failure to comply with any of those provisions. Section 13.5(7) shall also apply to such a request, with the exception of the 75 and 90 day time periods set forth in that Section, but the City Council may by resolution establish different or additional procedures for conducting the public hearing and acting on the request.

Section 13.6. Annual Permit Fees.

- (1) Establishment of Annual Fees; Payment. In addition to the non-refundable application fee set forth in Section 13.5(3) and any other fees for other permits or authorizations required by the City Code, the Permittee shall pay an annual fee in an amount established in Section 13.6(2). The annual fee may be modified from time to time by Ordinance or resolution of the City Council. The amount of the annual fee shall not exceed the fixed and variable costs to the City in maintaining the Public Rights-of-Way used by a Telecommunications Provider unless otherwise permitted by law. The annual fee shall be payable quarterly as follows:

1st quarter (Jan. 1 - March 31)	-	April 30
2nd quarter (April 1 - June 30)	-	July 31
3rd quarter (July 1 - Sept. 30)	-	October 31
4th quarter (Oct. 1 - Dec. 31)	-	January 31

When a Permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a quarterly payment is not paid when due, the Permittee shall pay a late payment charge of the greater of \$100 or interest at the rate of one percent (1%) over the prime rate then charged by Comerica Bank, or other banking institution designated by the City, and computed monthly. A Person who violates this Chapter by failing to obtain a Permit shall pay the annual fee plus late payment charges, as required by this Section, for the time period in which the violator did not have a Permit plus the actual costs of the City in enforcing this Chapter against the Person.

- (2) Amount of Annual Fee. The amount of the annual fee to be charged pursuant to Section 13.6(1) shall be:
- (a) for Major Street Public Rights of Way - ninety-five cents (\$.95) per lineal foot of Telecommunications Facilities in the Public Rights of Way.
 - (b) for Local Street Public Rights of Way - thirty-three cents (\$.33) per lineal foot of Telecommunications Facilities in the Public Rights of Way.
 - (c) for Public Rights of Way on roads under the jurisdiction of Oakland County Road Commission - thirty cents (\$.30) per lineal foot of Telecommunications Facilities in the Public Rights of Way.
 - (d) for Public Rights of way on roads under the jurisdiction of the State of Michigan Department of Transportation - one cent (\$.01) per lineal foot of Telecommunications Facilities in the Public Rights of Way.
- (3) Option to Pay Annual Fee Based Upon Gross Revenues. A Permittee, with the City's consent, may elect to pay an annual fee of 1% of its annual Gross Revenues as set forth below, in lieu of and in full satisfaction of the annual fee established by the City Council pursuant to Section 13.6 (1) and (2). Permittees may request this gross revenue based annual fee option for administrative convenience in computing the fee or for any other reason.
- (a) An election shall be made within forty five (45) days of applying for a Permit or at least sixty days before the start of any calendar year after issuance of a Permit.
 - (b) Any election, once made, shall continue in effect until the end of the next three calendar years, such that an election made in a permit application in 1998 would continue in effect through the end of the year 2001.
 - (c) An election shall be made on a form provided by the City. Copies of the form shall be submitted in the manner provided in Section 13.5. The Permittee shall supply all information requested on the form and any additional information the City deems reasonably necessary or relevant, including information on Affiliates of the Permittee relating to the requirements of Section 13.6 (3)(e), 13.6(3)(f), 13.6(3)(g) and 13.6 (4). After providing notice and an opportunity to be heard the City may reject or revoke an election for failure to comply with this Section 13.6(3)(c).
 - (d) The annual fees shall be paid quarterly by the same due dates as are set forth in Section 13.6(1).

- (e) An election shall apply to all Affiliates of a Permittee. In making its election, a Permittee shall expressly affirm that it has the authority to bind, and does bind, its Affiliates to the obligations of this Section 13.6(3) including Section 13.6(3)(f) and the audit and records provisions of Sections 13.6(3)(g) and 13.6(4).
 - (f) For purposes of this Section 13.6(3), “Gross Revenues” is defined in Appendix A.
 - (g) If a Permittee or any Affiliate of a Permittee refuses to pay the fees due under this option or prohibit or effectively prohibit the City from auditing the Permittee or its Affiliates under Section 13.6(4) to verify the accuracy of annual fees, then the City at its option may revoke the election for all or any portion of the time period in question. The annual fees computed under Section 13.6(1) and (2) shall then become immediately due and payable, less a credit for any sums paid by the Permittee or its Affiliates, plus the late payment charges set forth in Section 13.6(1) and any additional sums due under the last sentence of Section 13.6(4).
- (4) Records. All records (including those of Affiliates) reasonably necessary to verify the accuracy of annual fees paid by the Permittee under either Section 13.6(1) or Section 13.6(2) shall be made available by a Permittee at a location within the City or within twenty (20) miles of the City's boundaries. The City or its designated agent, by itself or in combination with other municipalities, reserves the right to audit any Permittee (or any Affiliate of a Permittee) to verify the accuracy of annual fees paid or to be paid to the City. Any additional amount due the City shall be paid within 30 days of submission of an invoice. If the additional amount due exceeds two percent (2%) of the total annual fee which the audit determines should have been paid for a calendar year, the Permittee shall pay the City's costs in connection with the audit within 30 days of submission of an invoice.
- (5) Other Payments. The non-refundable application fees and the annual fees established pursuant to this Chapter shall be in addition to any tax, charge, fee, or payment due, or to become due, to the City by a Permittee under the City Code or the laws of the State of Michigan. The Permittee shall properly and timely pay all such taxes, charges, fees of other payments, including, without limitation, all personal property taxes to be assessed against the Permittee’s Telecommunication System situated within the City of Southfield, pursuant to Article IX of the City Charter.
- (6) Misleading Statements. A Person who provides information to the City in connection with any matter under this Section 13.6 which contains an untrue statement of a material fact or omits a material fact necessary to make the

information not misleading shall be in violation of this Chapter, and shall be subject to all remedies for violation of this Chapter and the City Code including, without limitation, and Permit revocation pursuant to Section 13.13; provided, however, prior to any Permit revocation, the City shall give notice to a Permittee of such untrue statement or omission, and provide the Permittee a seven (7) day notice to cure such defect. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Chapter.

Section 13.7. Duration of Permit; Renewal.

A Permit shall remain in effect until December 31 following the tenth anniversary of the issuance of the Permit (unless the Permit expires pursuant to Section 13.8(11) or the Permit is earlier revoked pursuant to Section 13.13). Applications for renewal of Permits shall be filed in the same manner as original applications in Section 13.5 and shall be filed with the City not less than 120 days before the expiration of the Permit. The City expressly reserves all rights to approve, approve with conditions, or deny applications for Permit renewals pursuant to this Chapter and to impose additional conditions on renewed Permits.

Section 13.8. Permit Terms and Requirements.

- (1) Non-Exclusive; Additional Permits. A Permit shall be non-exclusive. The City expressly reserves the right to approve, at any time, additional Permits for access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and to enter into agreements and grant franchises for such access and use. The issuance of additional Permits, entry into agreements, or grant of franchises shall not be deemed to amend, modify, revoke, or terminate the terms and conditions of any Permits previously issued to Telecommunication Providers.
- (2) Expansion Requests. A Permit approved by the City Council shall authorize access to and ongoing use of the Public Rights-of-Way described in the Permit, subject to compliance with the conditions of the Permit, the requirements of this Chapter, and any other applicable requirements of the City Code or applicable state and federal law. The Permittee shall not use any Public Rights-of-Way not expressly authorized by the Permit. Any use of the Public Rights-of-Way to provide Telecommunications Services shall be performed only as authorized by the Permit. Any expansion and/or extension of a Permittee's Telecommunication System beyond the routes authorized by a Permit shall require a new Permit which may be issued by the City upon proper application. Provided, however, if the proposed expansion or extension is 1,000 feet or less, the Permittee may request, in writing, an administrative amendment to the original Permit, which shall be determined by the City Administrator. In deciding whether to grant or deny a request for an administrative Permit amendment, the City Administrator may consider, in addition to other relevant factors, whether any of the information required to be provided by subsections 13.5(a),(b) or (e) has changed, the time elapsed since the Permittee's last complete application, the number and location of expansions and/or extensions previously applied for by the Permittee, and the nature and location of the proposed expansion/extension requested by the Permittee. Such approval may be granted in writing by the City Administrator in

response to the written request from the Permittee for administrative amendment of the Permit. The City Council may establish by resolution a non-refundable application fee for such a request. The City Administrator may grant, in whole or in part, grant with conditions, or deny such request. The City Administrator shall not unreasonably deny such request. A denial of any request may be appealed to the City Council which shall make the final decision. Any expansion into additional Public Rights-of-Way shall be subject to all terms and conditions of the original Permit and this Chapter including, without limitation, the application of the annual fee to the expanded Public Rights-of-Way used by the Permittee.

- (3) Construction Permit. A Permittee shall not commence construction upon, over, across or under the Public Rights-of-Way in the City without first obtaining a construction permit as required under Chapter 33 of the City Code, as amended, for construction within the Public Rights-of-Way.
- (4) Lease or Use of Facilities; Overlapping. A Permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the Public Rights-of-Way by any Person (a "Proposed Sublessee") without the written consent, in advance, of the City. A Permittee shall notify the City Administrator in writing, at least sixty (60) days prior to the date it proposes to lease, sublease, license, or otherwise allow the use of its wires, conduits, poles or facilities in the Public Rights of Way. Within thirty (30) days after receiving such notice, the City Administrator will notify the Permittee in writing of the City's determination as to whether the Proposed Sublessee needs a Permit of its own. If the City Administrator determines that the Proposed Sublessee is solely using the facilities of the Permittee, has no facilities (including without limitation, any wires, conduits, pipes or poles) of its own to be placed on or within the Public Rights of Way, and the Proposed Sublessee's activities will have no additional impact on the Public Rights of Way, the City Administrator may determine that the Proposed Sublessee is not required to obtain a Permit for such purposes, and the City Administrator may administratively consent to the Proposed Sublessee's use of the Permittee's facilities, upon the Proposed Sublessee providing to the City evidence of insurance which complies in all respects with Section 13.11 of this Chapter. The Permittee shall remain liable to the City for any and all activities, omissions, negligence, and/or tortious conduct of the Proposed Sublessee, and/or any of its employees, agents, officers, or contractors. A Permittee shall not allow the property of a third party or non-Telecommunications System wires or any other facilities to be overlapped, affixed or attached to any portion of a Permittee's Telecommunications System; or allow other actions with a similar result without the written consent of the City Administrator.
- (5) "As Built" Maps. Without expense to the City, a Permittee shall provide the City with "as-built" maps, records and plans showing its Telecommunications System or portions thereof within the City, including those of Affiliates used by the Permittee, and maps and descriptive information of facilities of other Persons used by the Permittee. The City Administrator may waive part or all of this requirement if satisfactory records of the location of the Telecommunications System were previously provided to the City. The "as built" maps, records and plans shall be provided within thirty (30) days of the completion of the Telecommunications System and any extensions, additions, or modifications to

the Telecommunications System. In addition to the foregoing, a Permittee, without expense to the City, shall, upon forty-eight (48) hours notice, give the City access to all "as-built" maps, records, plans and specifications showing its Telecommunications System or portions thereof within the City. Upon request by the City, a Permittee shall inform the City as soon as possible (but no more than five (5) business days after the request) of any changes from previously supplied maps, records, or plans and shall mark up maps provided by the City so as to show the location of its Telecommunications System.

- (6) No Recourse. A Permittee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of the failure of the City to have the authority to grant all or any part of a Permit or the authority to grant permission to use all or part of the Public Rights-of-Way. A Permittee expressly acknowledges that on accepting a Permit it did so relying on its own investigation and understanding of the power and authority of the City.
- (7) No Inducement. By acceptance of a Permit, a Permittee acknowledges that it has not been induced to obtain the Permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any third Person concerning any term or condition of a Permit not expressed in this Chapter.
- (8) Acceptance of Terms and Conditions. Permittee acknowledges by the acceptance of a Permit that it has carefully read its terms and conditions and does accept all of such terms and conditions.
- (9) No Priority. A Permit does not establish any priority of use of the Public Rights-of-Way by a Permittee over any present or future Permittee's or parties having agreements with the City or franchises for such use. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between Permittee's, other Permit holders, parties having agreements with the City, and franchisees, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- (10) Future Use by City. A Permittee acknowledges, by accepting a Permit, that it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Each Permittee acknowledges and accepts as its own risk that the City may make use in the future of the Public Rights-of-Way which a Permittee is using or in which a Permittee's Telecommunications System is located in a manner inconsistent with the Permittee's use of such Public Rights-of-Way and that in such event the Permittee will not be entitled to compensation from the City.
- (11) Expiration of Permit. Unless the City grants an extension, a Permit shall expire one year from the date of issuance unless prior thereto the Permittee either (1) commences construction, installation, or operation of its Telecommunications System within the Public Rights-of-Way authorized by the Permit and diligently

pursues completion of construction or installation, or (2) commences use of the Public Rights-of-Way to provide Telecommunications Services as authorized by the Permit.

Section 13.9. Use of Public Rights-of-Way By Permittee.

- (1) No Burden on Public Rights-of-Way. A Permittee and its contractors and subcontractors and a Permittee's Telecommunications System shall not unduly burden or interfere with the present or future use of any of the Public Rights-of-Way within the City. A Permittee and its contractors and subcontractors shall at all times comply with the City of Southfield, Department of Public Works, Utility Policy (the "Utility Policy"), as same may be amended from time to time, respecting any work, operations or activities by or of the Permittee in the Public Rights-of-Way. The provisions and requirements of the Utility Policy, as same may be amended from time to time by the City, are hereby incorporated in this Ordinance by reference. A Permittee shall erect and maintain its Telecommunications System so as to cause minimum interference with the use of the Public Rights-of-Way and with the rights and reasonable convenience of property owners. Permittee's cables and wires shall be suspended or buried so as to not endanger or injure Persons or property in the Public Rights-of-Way. If the City in its reasonable judgment determines that any portion of the Telecommunications Facilities constitutes an undue burden or interference, the Permittee at its sole cost and expense shall modify its Telecommunications Facilities or take such other actions as the City may determine are in the public interest to remove or alleviate the burden, and the Permittee shall do so within the time period established by the City.
- (2) Restoration of Property. A Permittee and its contractors and subcontractors shall immediately restore, at the Permittee's sole cost and expense and in a manner approved by the City, any portion of the Public Rights-of-Way and/or private property that is in any way disturbed, damaged or injured by the construction, operation, maintenance or removal of the Telecommunications System to as good or better condition than that which existed prior to the disturbance and in accordance with the requirements of the Utility Policy. In the event that the Permittee, its contractors or subcontractors fail to do so within the time specified by the City, the City shall be entitled to complete the work and the Permittee shall reimburse the City for the costs of doing so.
- (3) Easements. Any easements over or under private property necessary for the construction or operation of a Telecommunications System shall be arranged and obtained for by the Permittee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by the Permittee and a violation of this Chapter. Any easements over or under property owned by the City other than the Public Rights-of-Way shall be separately negotiated with the City.
- (4) Tree Trimming. A Permittee may trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with its Telecommunications System in accordance with the Utility Policy. The Permittee shall minimize the trimming of trees to trimming only

those trees that are essential to maintain the integrity of its Telecommunications System. No trimming shall be done in the Public Rights-of-Way without previously informing the City.

- (5) Pavement Cut Coordination/Additional Fees. A Permittee shall coordinate all construction work in the Public Rights-of-Way with the City's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing"). A Permittee shall meet with the Public Works Director or his or her designee as requested by the Public Works Director to this end.

The goals of such coordination shall be to require a Permittee to conduct all work in the Public Rights-of-Way in conjunction with or immediately prior to any Street Resurfacing planned by the City, and to prevent the Public Rights-of-Way from being disturbed by a Permittee for a period of years after such Street Resurfacing. No pavement may be open cut within seven (7) years of either its original placement or resurfacing, unless the City shall expressly approve same, in writing, pursuant to the Utility Policy.

- (6) Marking. A Permittee shall mark any installations of its Telecommunications System which occur after the effective date of this Chapter as follows:

(a) Aerial portions of its Telecommunications System shall be marked with a marker on its lines on alternate poles which shall state the Permittee's name and provide a toll-free number to call for assistance.

(b) Direct buried underground portions of its Telecommunications System shall have (i) a conducting wire placed in the ground at least several inches above the Permittee's cable (if such cable is non-conductive), (ii) at least several inches above that a continuous colored tape with the Permittee's name and a toll-free phone number and a statement to the effect that there is buried cable beneath, and (iii) stakes or other appropriate above-ground markers with the Permittee's name and a toll-free number indicating that there is buried telephone cable below.

(c) Portions of its Telecommunications System located in conduit, including facilities of others used by a Permittee, shall be marked at each manhole with the Permittee's name and toll-free telephone number to call for assistance.

- (7) Compliance with Laws. A Permittee shall comply with all laws, statutes, Ordinances, rules and regulations regarding the installation, construction, ownership and use of its Telecommunications System, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any Chapter requiring the installation of additional conduit when a Permittee installs underground conduit for its Telecommunications System, when deemed reasonably necessary or advisable by the City). Before any installation is commenced, the Permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the City or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. A Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National

Electric Code (latest edition). A Permittee shall comply with all zoning and land use Ordinances and historic preservation Ordinances as may exist or may hereafter be amended. A Permittee shall comply with all provisions of the Utility Policy.

- (8) Street Vacation. If the City vacates or consents to the vacation of Public Rights-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of a Permittee's facilities in the vacated right-of-way, the Permittee shall, as a condition of the Permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the City or a court of competent jurisdiction. The Permittee shall relocate its facilities to such alternate route as the City, acting reasonably and in good faith, shall designate.
- (9) Relocation. If the City requests a Permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public projects, the Permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense, to such alternate route as the City, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the City.
- (10) Public Emergency. The City shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of a Permittee, without any prior notice, if such action is deemed necessary by the Mayor, City Administrator, Police Chief, or Fire Chief or their designees because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major watermain breaks, hazardous material spills, etc. The Permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the City.
- (11) Miss Dig. If eligible to join, a Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- (12) Use of Existing Facilities; Undergrounding. A Permittee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles or other facilities unless expressly authorized by the Permit. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a Permittee's Telecommunications System shall also be located underground unless otherwise expressly authorized by the Permit. All undergrounding shall be at the sole cost and expense of the Permittee.
- (13) Underground Relocation. If a Permittee has its facilities on poles of Consumers' Energy Company or another public utility company and Consumers' Energy Company or other public utility company relocates its facilities underground, the

Permittee shall relocate its facilities underground in the same location at Permittee's sole cost and expense.

- (14) Pole/Conduit License Agreement; Notification. If a Permittee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers' Energy Company or other entity, then Permittee shall notify the City Administrator in writing within thirty (30) days.
- (15) Identification. All personnel of a Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A Permittee shall account for all identification cards at all times. Every service vehicle of a Permittee and its contractors or subcontractors shall be clearly identified as such to the public with the Permittee's name and telephone number.
- (16) 9-1-1 Emergency Service. As a condition of a Permit, a Permittee providing Local Exchange Service shall provide, or arrange to have provided, if permitted by the Michigan Public Service Commission, 9-1-1 service within the City in accordance with the provisions of the applicable 9-1-1 Service Plan and the rules and orders of the Michigan Public Service Commission.

ARTICLE IV. LIABILITY AND INSURANCE

Section 13.10. No City Liability; Indemnification.

- (1) City Not Liable. The City, and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions, shall not be liable to a Permittee or to its Affiliates or customers for any interference with or disruption in the operation of a Permittee's Telecommunications System or the provision of Telecommunications Services, or for any damages arising out of a Permittee's use of the Public Rights-of-Way.
- (2) Indemnification. As a condition and by acceptance of a Permit, a Permittee shall defend, indemnify, protect, and hold harmless the City, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of the Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Permittee, its officers, agents, employees, contractors, successors, or assigns.

Section 13.11. Insurance.

- (1) A Permittee shall obtain and maintain in full force and effect for the duration of a Permit the following insurance covering all insurable risks associated with its ownership or use of its Telecommunications System:

- (a) A comprehensive general liability insurance policy, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million (\$5,000,000.00) Dollars . If the Permit application proposes substantial underground facilities to be constructed by or on behalf of the Permittee, as determined by the City, the City may require up to Ten Million (\$10,000,000.00) Dollars general liability insurance coverage, pursuant to this Section 13.11(1)(a).
 - (b) An Automobile Liability Insurance Policy covering any vehicles used in connection with its activities under its Permit in an amount not less than Two Million (\$2,000,000.00) Dollars.
 - (c) Workers' Compensation and Employer's Liability Insurance with statutory limits.
- (2) The City shall be named as an additional insured in all applicable policies, except the insurance required pursuant to 13.11(c) above. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the City. A Permittee shall provide the City with a certificate of insurance evidencing such coverage as a condition of issuance of the Permit and shall maintain on file with the City a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the state of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A-,VII or better by A.M. Best Company.
 - (3) If the insurance policies required by this Section are written with deductibles in excess of \$50,000, the deductibles shall be approved in advance by the City. A Permittee agrees to indemnify and save harmless the City from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Chapter.
 - (4) The Permittee shall require that its contractors and subcontractors working in Public Rights-of-Way carry in full force and effect workers' compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which Permittee is required to obtain under Section 13.11(1) with appropriate limits of coverage.
 - (5) The Permittee's insurance coverage shall be primary insurance with respect to the City, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions. Any insurance or self-insurance maintained by any of them shall be in excess of the Permittee's insurance and shall not contribute to it.

**ARTICLE V. ASSIGNMENT OF PERMIT PROHIBITED;
REVOCATIONS AND REMOVAL OF FACILITIES**

Section 13.12. No Assignment or Transfer of Control Without City Consent.

A Permittee shall not assign or transfer a Permit or any of its rights under a Permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, without the prior written consent of the City, which shall not be unreasonably withheld. The Permittee shall reimburse the City for reasonable, actual costs incurred in the review of a request by the Permittee for consent to an assignment or transfer of the Permit. Notwithstanding anything in this Section to the contrary, the Permittee may grant a security interest in its rights under a Permit in favor of a third party without first obtaining the consent of the City. If a Permit or any rights thereunder is assigned or transferred in whole or in part with the approval of the City, the terms and conditions of the Permit and of this Chapter shall be binding upon the successors and assigns of the Permittee.

Section 13.13. Revocation.

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional separate and distinct remedy the right to revoke a Permit and all rights and privileges of a Permittee in any of the following events or for any of the following reasons:

- (1) A Permittee fails after thirty (30) days prior written notice to comply with any of the provisions of the Permit or this Chapter (except Section 13.5(6)); or
- (2) A Permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (3) All or part of a Permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the Permittee within ninety (90) days from such sale; or
- (4) A Permittee violates Section 13.5(6) of this Chapter or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the City; or
- (5) The City condemns all of the property of a Permittee within the City by the lawful exercise of eminent domain; or
- (6) A Permittee abandons its Telecommunication System or fails to seek renewal of its Permit; or
- (7) A Permittee fails to pay any fines due for violations of this Chapter; or
- (8) A Permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an Ordinance providing for civil infractions.

No revocation, except for reason of condemnation, shall be effective unless the City Council shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to the Permittee and a hearing at which the Permittee receives notice and an opportunity to be heard.

Section 13.14. Removal.

- (1) Removal; Underground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, the Permittee may remove any underground Cable from the Public Rights-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of Cable to be removed. Except as otherwise provided, the Permittee shall not remove any underground Cable or conduit which requires trenching or other opening of the Public Rights-of-Way along the extension of Cable to be removed. The Permittee shall remove, at its sole cost and expense, any underground Cable or conduit which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove Cable or conduit shall be mailed to the Permittee not later than thirty (30) calendar days following the date of revocation or expiration of the Permit. A Permittee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Permit of its intention to remove Cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of revocation or expiration of the Permit. Underground Cable and conduit in the Public Rights-of-Way which is not removed within such time period shall be deemed abandoned and, at the option of the City, title shall be vested in the City. For purposes of this subsection (1), "Cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.
- (2) Removal; Above Ground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, a Permittee, at its sole cost and expense, shall, unless relieved of the obligation by the City, remove from the Public Rights-of-Way all above ground elements of its Telecommunication System, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.
- (3) Permits; Restoration; Completion. A Permittee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or Ordinances of the City, shall conduct and complete the work of removal in compliance with all such applicable law or Chapters, and shall restore the Public Rights-of-Way to the same condition they were in before the work of removal commenced.

ARTICLE VI. MISCELLANEOUS

Section 13.15. Other Provisions Not Waived.

- (1) Nothing in this Chapter shall be construed as a waiver of any ordinances, Charter provisions, codes, or regulations of the City or the City's right to require Permittee or Persons utilizing the Telecommunication System or Telecommunications Services to secure appropriate permits or authorization for such use.
- (2) The City fully reserves its police powers to ensure and protect the public health, safety, and welfare and fully reserves its authority and power to amend this

Chapter at any time. The terms and conditions of any Permit shall be subject to compliance with any future amendments of this Chapter. The City fully reserves its right to exercise the reasonable control of the Public Rights-of-Way pursuant to Article VII, § 29 of the 1963 Michigan Constitution.

- (3) Nothing in this Chapter or any Permit shall limit any right the City may have to acquire by eminent domain any property of a Telecommunications Provider.
- (4) Nothing in this Chapter or any Permit shall limit the authority of the City to impose a tax, fee, or other assessment of any kind on any Person. A Telecommunications Provider shall pay all fees necessary to obtain all Federal, State, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Telecommunications System within the Public Rights-of-Way.

Section 13.16. Severability.

The various parts, sections and clauses of this Chapter are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Chapter shall not be affected thereby .

Section 13.17. Authorized City Officials.

Any City constable is hereby designated as the authorized city official to issue municipal civil infraction citations (directing 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 Chapter as provided by this Code.

Section 13.18. Municipal Civil Infraction.

A person who violates any provision of this Chapter is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than Five Hundred Dollars (\$500.00) and not more than Five Thousand Dollars (\$5,000), plus costs and other sanctions, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this Chapter shall be subject to increased fines as follows:

First repeat offense	Not less than One Thousand Dollars (\$1,000) and not more than Ten Thousand Dollars (\$10,000)
Second and subsequent repeat offenses	Not less than Two Thousand Dollars (\$2,000) and not more than Twenty Thousand Dollars (\$20,000).

Section 2. Should any section, clause or paragraph of this Ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole or part thereof other than the part declared to be invalid.

Section 3. All ordinances in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 4. This Chapter shall become effective immediately upon publication in a newspaper of general circulation within the City of Southfield.

Donald F. Fracassi
Mayor

Nancy L.M. Banks
City Clerk

APPENDIX A--GROSS REVENUES

For the purpose of Section 13.6, "Gross Revenues" means all amounts earned, received or accrued by a Permittee and its Affiliates in whatever form and from all sources which are in connection with or attributable to the Permittee's Telecommunications System in City or to the Permittee's or its Affiliates' provision of Telecommunications Services within the City.

(1) Gross Revenues shall include, but not be limited to, all revenues from or attributable to customers, other carriers, or third parties whether for services, equipment, directories, publications, or otherwise. It shall include revenues of the types generally described in the Revenue Accounts of the FCC Uniform System of Accounts for Telecommunications Companies as in effect on October 31, 1996, 47 CFR § 32 Subpart D, whether or not the Permittee or its Affiliates are subject to such System of Accounts, including Accounts 4999 through 5302 and any cross referenced accounts or sub-accounts which may be established by Permittee or its Affiliates relating to the preceding account numbers. Gross Revenues shall include all services provided by a Permittee or its Affiliates, whether or not subject to regulation at the federal, state or local level. For transactions with Affiliates Gross Revenues shall be computed in accordance with the principles set forth in 47 CFR § 32.27 as in effect on October 31, 1996, including in particular § 32.27(d), and otherwise at the fair market rate.

(2) Gross Revenues shall include all amounts received, earned, or accrued during a period regardless of whether (a) received or not in the case of amounts earned or accrued; (b) the amounts are to be paid in cash, in trade, or by means of some other benefit to the Permittee or its Affiliates; © the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; (d) the amounts are characterized, separately identified, or accounted as being for goods, services, or fees to be paid to units of government or government agencies; or (e) the amounts are initially recorded or received by the Permittee or by an Affiliate. However, Gross Revenues shall exclude uncollectible accounts during the period, computed on a fair basis consistently applied.

(3) Gross Revenues shall be computed at the level where first received from an entity not in any way Affiliated with the Permittee and shall not be net of (a) any operating expense; (b) any accrual, including without limitation, any accrual for commissions; or © any other expenditure.

(4) Revenues from customers shall be allocated to the City based upon whether or not the location being provided service pursuant to the Permit is located in the City and not by any other allocation method. Revenues from Non-Switched Telecommunications Services shall be allocated to the City as set forth in Appendix A-1.

(5) Revenues whose source cannot be identified with a specific customer or City shall be allocated to the City based upon the percentage of customers in the City compared to the number of customers served by that portion of Permittee's Telecommunications System (including portions outside the City) to which such revenues are reasonably attributable.

APPENDIX A-1

ALLOCATION OF REVENUE FROM NON-SWITCHED TELECOMMUNICATIONS SERVICES

Gross Revenues from Non-switched Telecommunications Services shall be allocated to the City as follows:

a. For purposes of this Appendix A-1, “Non-Switched Telecommunications Services” means the two-way transmission of high speed digital voice, data and (for such applications as teleconferencing) video signals (I) to carry interexchange traffic between long distance carrier points-of-presence; (ii) to interconnect user locations to interexchange carrier points-of-presence; and (iii) to interconnect user locations.

b. If all the locations of a given customer receiving service from the Permittee are in the City, Gross Revenues shall include all revenues received from or imputed to that customer.

c. If any but not all of the locations of a given customer receiving service from the Permittee are in the City, the revenues attributable to the City shall be computed separately for each service taken by the customer. For each separate service taken the revenues attributable to the City are all revenues received from or imputed to that service times a fraction whose numerator is the number of locations of the customer within the City taking that service and whose denominator is all the customer's locations taking that service.

d. If (such as with an Interexchange Carrier which contracts for capacity from the Permittee so as to connect with its customers through the Permittee’s Telecommunications System) a customer uses the Permittee’s Telecommunications System to connect to third parties, such third parties shall be treated as customers (or customer locations, as the case may be) for purposes of this provision and revenue attribution thereunder. "Interexchange Carrier" means a Person who provides interexchange telecommunications service, commonly called a long distance carrier (Sprint, MCI and AT&T are examples), and typically deemed a carrier under the Federal Communications Act of 1934 or amendments thereto.

e. The different services taken by customers shall correspond with the classes of service offered by the Permittee.

f. Examples of the preceding computations are as follows:

Example 1

A customer leases a 56 kbps data channel for \$5,000/month which serves/may be accessed by 1 customer location each in Municipality A, Municipality B, and Municipality C. \$1,666/month is Gross Revenues from Municipality A (1/3 times \$5,000).

Example 2

A customer leases 3 T-1 telephone lines @ \$400/month to connect to MCI. Gross Revenues from Municipality A are computed separately for each line as follows:

The first connects a location in Municipality B to an MCI point of presence in Municipality A. \$200/month is the Gross Revenues from Municipality A for this service ($\frac{1}{2}$ times \$400).

The second connects a location in Municipality A to the same MCI point of presence. All \$400 is Gross Revenues from Municipality A for this service.

The third connects a location in Municipality C to a different MCI point of presence, located in Municipality D. There are no Gross Revenues from Municipality A for this service (but there would be Gross Revenues of \$200 each in Municipality C and Municipality D).

Example 3

Sprint, an Interexchange (long distance) Carrier, leases a large amount of capacity from the Permittee for \$50,000/month so that persons desiring to use its services may connect with it directly and not have to go through the local Ameritech central office. Sixteen (16) customers take advantage of this service, comprising 42 locations, of which 28 locations are in Municipality A. Sprint's point of presence is also in Municipality A.

\$41,667 is Gross Revenues from Municipality A as follows:

\$25,000 (half of the \$50,000) is included because all the circuits (wherever the customer is located) connect to the point of presence in Municipality A, i.e.--each customer circuit is composed of two locations (one at the customer, one at Sprint), one of which is in Municipality A.

\$16,667 ($\frac{28}{42}$ of \$25,000) because the other half of the \$50,000 is attributable to the specific customer locations being connected to Sprint, of which 28 out of 42 are in Municipality A.