

October 21, 2002
Gladwin, Michigan

The Regular Meeting of the Gladwin City Council was called to order at 7:30 p.m. by Mayor Winarski.

Present: Alward, Caffrey, Crawford, Hindman, Jungman, Matteson, Mienk, Novak

Absent: None

Staff Present: Bob McConkie, Shannon Greaves, Doug Jacobson, Charlie Jones

Also Present: Mayor Winarski, Amy Morris, Pastor Sprang, Fred Koning, Jim Largent, Mike Shea, Doug Scott, Judy Grant, Debra Largent

Motion by Council Member Crawford, supported by Council Member Hindman to approve Warrant 03-12 in the amount of \$53,871.27. All ayes. Motion carried.

Jim and Debra Largent were present to discuss issues of the culvert, sidewalk and driveway at 350 Clendening.

Judy Grant was present to discuss the water quality at her residence at 191 North Spring.

Mayor Winarski introduced Sheriff Mike Shea.

Doug Scott gave the City Council an update on the Industrial Park expansion construction.

Motion by Council Member Novak, supported by Council Member Caffrey to approve the agenda. All ayes. Motion carried.

Motion by Council Member Jungman, supported by Council Member Novak to establish the consent agenda which includes the following: Communications – (i) Airport Letter to West Rohde Woodruff, (ii) Packaging Direct Letter, (iii) MML – Vote No on Proposal 4, (iv) MDOT – Letter Regarding Approaches on Cedar Avenue Bridge; Meetings – Housing Commission 9/10/02, District Commissioners 9/24/02, E911 Central Dispatch 10/9/02, Zoning Board of Appeals 10/10/02, Safety Committee 10/15/02, DDA Meeting 10/17/02; Miscellaneous – Halloween Party – Donation. All ayes. Motion carried.

Old Business

None

New Business

RESOLUTION

**Department of Natural Resources Lease of Property – 201 South State Street
(See Attached)**

Motion by Council Member Crawford, supported by Council Member Jungman to case the Michigan Municipal League Board of Directors ballot as presented. All ayes. Motion carried.

Council Member Jungman stated the Safety Committee's recommendation that sidewalks be installed on the north and south sides of M-16 west to M-18. Council Member Hindman stated that he would like to see a timeline established. Administrator McConkie stated that he would contact the engineer's to get a cost estimate and bring it to the next meeting.

Motion by Council Member Matteson, supported by Council Member Caffrey to purchase a portion of the water meter reading system for \$38,795.00. Mayor Winarski stated that he would like to see a schedule for installation. All ayes. Motion carried.

Motion by Council Member Crawford, supported by Council Member Jungman to appoint Debbie Platt to the Parks Commission (expires 9/7/07) and Grant Wood to the Parks Commission (expires 10/21/07). All ayes. Motion carried.

Motion by Council Member Hindman, supported by Council Member Crawford to approve a 50% payment of Payment No. 1 in the amount of \$53,759.25 due to Bilacic Trucking, Inc. until a determination can be made regarding the quantity of cement. All ayes. Motion carried.

ORDINANCE NO. 267 TELECOMMUNICATIONS

Sec. 1 Purpose.

The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

Sec. 2 Conflict.

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

Sec. 3 Terms Defined.

The terms used in this ordinance shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.¹

City means the City of Gladwin.

City Council means the City Council of the City of Gladwin or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

City Administrator means the City Administrator or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

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

MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.

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

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

Telecommunication Facilities or *Facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

¹ A copy of the Act can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Telecommunications Provider, Provider and Telecommunications Services mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

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

Sec. 4 Permit Required.

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

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Administrator, and one copy with the City Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.²

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

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

² A copy of the application form as approved by the Commission can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

(e) *Additional Information.* The City Administrator may request an applicant to submit such additional information which the City Administrator deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Administrator. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

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

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

Sec. 5 Issuance of Permit.

(a) *Approval or Denial.* The authority to approve or deny an application for a permit is hereby delegated to the City Administrator. Pursuant to Section 15(3) of the Act, the City Administrator shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) of this ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Administrator shall notify the MPSC when the City Administrator has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Administrator shall not unreasonably deny an application for a permit.

(b) *Form of Permit.* If an application for permit is approved, the City Administrator shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.³

³ Copies of the permit forms currently approved by the MPSC can be obtained on the internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the City Administrator may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the City Administrator may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

Sec. 6 Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit as required under chapter ___ of this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

Sec. 7 Conduit or Utility Poles.

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

Sec. 8 Route Maps.

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

Sec. 9 Repair of Damage.

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

Sec. 10 Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the City set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Sec. 11 Modification of Existing Fees.

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

Sec. 12 Savings Clause.

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

Sec. 13 Use of Funds.

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

Sec. 14 Annual Report.

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

Sec. 15 Cable Television Operators.

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

Sec. 16 Existing Rights.

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

Sec. 17 Compliance.

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

(a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this ordinance;

(b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this ordinance;

(c) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 4(g) of this ordinance;

(d) Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with Section 5(a) of this ordinance;

(e) Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(a) of this ordinance;

(f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this ordinance;

(g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(b) of this ordinance;

(h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this ordinance;

(i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this ordinance;

(j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;

(k) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;

(l) Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and

(m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

Sec. 18 Reservation of Police Powers.

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

Sec. 19 Severability.

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

Sec. 20 Authorized City Officials.

The City Administrator or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations (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 ordinance as provided by the City Code.

Sec. 21 Municipal Civil Infraction.

A violation of this ordinance shall be a violation of the City Code and shall be a misdemeanor, with a maximum penalty of 90 days in jail and/or a \$100 fine. Nothing in this Section 21 shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.

Sec. 22 Repealer.

(a) All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

Sec. 23 Effective Date.

This ordinance shall take effect on October 21, 2002.

Roll Call Vote:

Ayes: Alward, Caffrey, Crawford, Hindman, Jungman, Matteson, Mienk, Novak
Nays: None
Absent: None
Abstain: None

RESOLUTION 03-10
TELECOMMUNICATIONS RESOLUTION

CITY OF GLADWIN
COUNTY OF GLADWIN, MICHIGAN

At a regular meeting of the City Council of the City of Gladwin, County of Gladwin, Michigan, held in said City on the 21st day of October, 2002, there were:

The following resolution was offered by Caffrey and seconded by Hindman:

WHEREAS, the State of Michigan recently enacted the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002 (the "Act"); and

WHEREAS, the Act, among other things, provides for a uniform permit and permit fee for access to and use of the public rights-of-way by telecommunications providers; and

WHEREAS, the Act further provides, among other things, for a distribution of funds from the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (the "Authority"), established pursuant to Section 3 of the Act, *provided* the City takes certain action in compliance with the Act; and

WHEREAS, the City has, contemporaneously with this resolution, adopted Ordinance No. 267 (the "Ordinance") for purposes of complying with the requirements of the Act, so as to ensure that the City qualifies for distributions from the Authority under the Act; and

WHEREAS, the City desires to give additional instruction and direction to the City Administrator and other City personnel charged with implementing the Ordinance;

NOW, THEREFORE, it is hereby

RESOLVED, that the City Administrator is hereby authorized and directed to identify all telecommunications providers holding permits or authorizations issued by the City and, as part of that process, to compile a list of all telecommunication providers who have paid fees to the City since 1990, all telecommunications providers identified in the City's engineering or construction permit files and all regulated telephone interexchange carriers and competitive access providers listed on the web site of the Michigan Public Service Commission and all regulated local telephone companies licensed in Michigan listed on such web site;

FURTHER RESOLVED, that the City Administrator is hereby authorized and directed to provide a copy of the Ordinance to the cable company[ies] providing service in the City, and to all telecommunications providers identified above, in satisfaction of the requirements of Section 13(4) of the Act; and

FURTHER RESOLVED, that the finance department of the City is hereby directed to return, to telecommunications providers, any checks or portion of checks received by the City from such providers for access and usage of the public rights-of-way in the City after November 1, 2002 (other than the \$500 application fee allowed under the Act and any fees or funds received from the Authority).

Adopted this 21st day of October, 2002.

YEAS: Alward, Caffrey, Crawford, Hindman, Jungman, Matteson, Mienk, Novak
NAYS: None

Comments

Council Member Matteson stated that there would be a Personnel Committee meeting on Thursday, October 24, 2002 at 7:00 p.m.

Council Member Crawford stated that there would be a Finance Committee meeting on Wednesday, October 30, 2002 at 4:00 p.m.

Council Member Novak inquired as to the meeting with Charlotte Sutherland regarding the property adjacent to the park and Community Center. Administrator McConkie stated that he had not set the meeting date.

Chief Jones stated that Halloween would be from 6:00 p.m. to 8:00 p.m.

Mayor Winarski presented a 25-year service plaque to Administrator McConkie.

Motion by Council Member Jungman, supported by Council Member Alward to adjourn.
All ayes. Motion carried.

Meeting ended at 8:33 p.m.

Thomas L. Winarski, Mayor

Shannon Greaves, City Clerk