

# FRANKLIN TOWNSHIP

Erie County, Pennsylvania

## PERMIT AND FEE FOR USE OF RIGHTS OF WAY

### ORDINANCE NO. 1 OF 2004

**AN ORDINANCE OF THE TOWNSHIP OF FRANKLIN DEFINING, PERMITTING AND REGULATING USE OF RIGHTS-OF-WAY; ESTABLISHING REQUIREMENTS FOR FILING A BOND AND OBTAINING A PERMIT; ESTABLISHING PRIORITY AMONG COMPETING USERS; ESTABLISHMENT OF FEES; REQUIRING DETAILED PLANS OF PROPOSED CONSTRUCTION; REQUIRING COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS; AUTHORIZING ACTIONS BY FRANKLIN TOWNSHIP FOR VIOLATIONS HEREOF AND PRESCRIBING THE FORM OF NOTICES HEREUNDER; AND PROVIDING FOR ACCEPTANCE HEREOF BY GRANTEE.**

**WHEREAS**, the Board of Supervisors of Franklin Township desires to provide those who wish to use the Township's Rights-of-Way a defined and equal basis upon which that use can be secured;

**WHEREAS**, the Board of Supervisors of Franklin Township recognizes that the Township's Rights-of-Way are an asset that the Township owns, maintains and controls on behalf of its citizens;

**WHEREAS**, the Board of Supervisors of Franklin Township is permitted by Commonwealth and Federal laws and rules and regulations to levy a reasonable fee for the use and maintenance of it rights-of-way;

**NOW THEREFORE**, The Franklin Township Board of Supervisors hereby ordains:

#### **Section 1. Definition of Terms.**

When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular, and words in the singular number include the plural):

**AFFILIATE** - an entity which owns or controls, is owned or controlled by, or is under common ownership with grantee.

**BOARD OF SUPERVISORS** - the governing body of the Township of Franklin in such composition as determined by the rules governing this particular governmental entity.

**GRANTEE** - the grantee of rights under this ordinance.

**MUNICIPALITY** - the Township of Franklin in its present incorporated form and as it may be changed by annexation.

**PERSON** - an individual, partnership, association, joint stock company, trust corporation or government entity.

**PROPERTY OF GRANTEE** - all property owned, installed or used by the grantee in the conduct of a business in the Township of Franklin.

**PUBLIC WAY** - the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way including, but not limited to, public utility easements, dedicated utility strips or rights-of-way improvements located thereon now or hereafter held by the Township of Franklin and the grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the utility system. Public way shall also mean any easement now or hereafter held by the Township of Franklin within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall entitle the Township of Franklin and the grantee to the use thereof for the purpose of cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the utility system.

## **Section 2. Bond and Permit Requirements.**

No person shall enter upon, over or under, or use or occupy any public street, bridge, sidewalk or other public way for the purpose of providing telecommunications services or other public utilities without first filing a bond and obtaining a permit from the Board of Supervisors of Franklin Township.

## **Section 3. Priority Among Competing Users.**

The Board of Supervisors shall assign priorities among competing users of the public rights-of-way according to the order of completed permit applications and shall have the power to prohibit or limit the placement of new or additional equipment within the rights-of-way if there is sufficient space to reasonably accommodate all requests to occupy and use the rights-of-way. In making such decisions, the Board of Supervisors shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by considerations of the public interest, the public's need for the particular service, the condition of the rights-of-way, the time of year, the protection of existing equipment in the rights-of-way, and future Township plans for public improvements and development projects.

## **Section 4. Establishment of Fees.**

1. The Board of Supervisors shall have the authority to establish yearly fees for all rights-of-way, easements or other uses of public property over or under any public streets, bridges, sidewalks or other public ways in the Township by the persons supplying telecommunications, electric, lights,

heat, water, steam, power or any service. Lineal-foot fees shall be established from time to time by the Board of Supervisors, based on historical costs of maintenance of the public property and estimated prospective costs of maintenance and use thereof. Costs of maintenance shall include inter alia relocation costs of all facilities and/or equipment located upon over or under the public rights-of-way.

2. The fee established herein shall be in addition to any Highway Occupancy Fee required.
3. Nothing in this Ordinance shall prohibit the Township and the Grantee from negotiating a lower fee or no fee in exchange for emoluments received by the Township.

### **Section 5. Submission of a Detailed Plan of Proposed Construction.**

Each applicant before starting any work involving any apparatus, device, transmission facilities or means of the supply of telecommunications, electric, light, heat, water, steam, power or any other service shall submit to the Township detailed plans of its proposed construction. All plans shall be subject to Township approval before a permit is granted.

### **Section 6. Conformity with Plans and Specifications.**

All construction shall be in conformity with plans and specifications promulgated by the Board of Supervisors and subject to Township inspection. Any deviation that may occur for whatever reason must first be approved by the Township. Revised "as built" drawings must be provided so that all plans retained by the Township for future reference accurately depict the installed facilities.

### **Section 7. Acceptance of Permit by Permit Holder.**

By accepting a permit, a permit holder agrees:

1. To remove or relocate at its own expense all installations from public rights-of-way upon thirty (30) days written notice from the Township requesting the removal; and
2. To indemnify and hold harmless the Township in connection with any removal or relocation and for any costs incurred as a result of removal or relocation.

### **Section 7. Trimming of Trees.**

During the permit term, a permit holder may, or at the direction of the Township must, at its own cost and expense, trim trees, in or on the rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimmings must be performed in accordance with state law and the standards promulgated by the Township.

## **Section 8. Safety Requirements.**

1. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All such work shall be performed in substantial compliance with applicable Federal, State and local regulations.
2. Grantee shall keep all structures and all lines, equipment and connections in, over, under and upon all public ways in a safe and suitable condition and in good order and repair.

## **Section 9. Termination and Procedures Upon Termination.**

1. The Township shall have the right to terminate this ordinance in the event of the failure of the grantee to perform any of the provisions of this ordinance, or in the event of any breach of the covenants and conditions contained herein. In considering termination for just cause, as initiated by the Township, the following provisions shall apply:

A. **Notice of Violation.** In the event the Township believes that the grantee has not complied with the terms of the ordinance, it shall notify grantee of the exact nature of the alleged noncompliance.

B. **Grantee's Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the notice described in this §9 to (i) respond to the Township contesting the assertion of noncompliance, or (ii) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) days period, initiate reasonable steps to remedy such default and notify the Township of the steps being taken and the projected date that they will be completed.

C. **Public Hearing.** In the event that grantee fails to respond to notice, or in the event that the alleged default is not remedied within sixty (60) days after the grantee is notified of the alleged default, the Township shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Board of Supervisors of Franklin Township which is scheduled at a time which is no less than five (5) business days therefrom. The Township shall notify the grantee of the date, time and place of such meeting and provide the grantee with an opportunity to be heard.

D. **Enforcement.**

- (1) Subject to applicable Federal and State law, in the event the Township, after such meeting, determines that grantee is in default of any provision of the Agreement, the Township may:
  - (a) Commence an action at law for monetary damages or seek other equitable relief.
  - (b) In the case of a substantial default to a material provision of the ordinance, declare the agreement to be revoked.

(c) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

(2) The grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Agreement by reason of any failure of the Township to enforce prompt compliance.

E. **Acts of God.** The grantee shall not be held in default or noncompliance with the provisions of this ordinance, nor suffer any enforcement or penalty relating thereto, where such compliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

2. To conclude grantee involvement with the Township, the grantee shall compute and pay to the Township any and all sums due. This final payment shall be accomplished within sixty (60) days of termination.

#### **Section 10. Penalties.**

Any person, firm or corporation who shall violate any provision of this ordinance, upon conviction thereof in an action brought before a district justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day of violation of this ordinance continues or each section of this ordinance which shall be found to have been violated shall constitute a separate offense.

#### **Section 11. Repealer.**

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

#### **Section 12. Severability.**

If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Township that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

#### **Section 13. Effective Date.**

This ordinance shall become effective in accordance with law.

**APPROVAL PAGE**  
**FRANKLIN TOWNSHIP ORDINANCE NO. 1 OF 2004**

FRANKLIN TOWNSHIP  
BOARD OF SUPERVISORS

\_\_\_\_\_  
JOHN J. SACHAR  
Chairman

\_\_\_\_\_  
C. JARRETT MILLER  
Vice Chairman

\_\_\_\_\_  
DAVID G. HENDERSON  
Supervisor

Attest:

\_\_\_\_\_  
BONNIE J. BERNHARDT  
Secretary/Treasurer

I hereby certify that the foregoing Ordinance was advertised in the Albion News on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at the regular meeting of the Franklin Township Board of Supervisors held on the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
BONNIE J. BERNHARDT  
Secretary/Treasurer