



# CITY of NOVI CITY COUNCIL

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**Agenda Item 7  
August 13, 2007**

**SUBJECT:** Consideration of Ordinance No. 07-157.04, an amendment to the Novi Code of Ordinances, Chapters 31 (Streets, Sidewalks and Other Public Places), to add requirements to address franchise utility construction in the City's rights-of-way. **First Reading**

**SUBMITTING DEPARTMENT:** Engineering *RL*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

Franchise telecommunications equipment is being installed in the City's rights-of-way that may damage and/or make it difficult to maintain buried public utilities. In addition, these structures may obstruct safe sight distances and pose aesthetic concerns.

To address the potential risks to public health, safety and welfare that utility structures pose, Engineering Division staff and the City Attorney - in collaboration with neighboring communities - have developed requirements to mitigate the impact that the installation of utility-related structures in the public right-of-way may have on the City and its residents. Specifically, the attached proposed ordinance amendment would revise utility plan submittal requirements, add standards for a utility company's use of the right-of-way, add standards for the removal of structures from the right-of-way, and add exemptions from the permitting process (Secret Wardle's August 3, 2007 letter, attached).

**RECOMMENDED ACTION:** Consideration of Ordinance No. 07-157.04, an amendment to the Novi Code of Ordinances, Chapters 31 (Streets, Sidewalks and Other Public Places), to add requirements to address franchise utility construction in the City's rights-of-way. **First Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

August 3, 2007

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Mayor Landry and City Council  
City of Novi  
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KRISTIN BRICKER KOLB  
Direct: 248-539-2837  
kkolb@secrestwardle.com

**Re: Draft Text Amendment to Chapter 31 Regarding Placement of  
Structures in the Public Right-of-Way  
Our File No. 55142.NOV**

Dear Mayor Landry and Council Members:

Attached for consideration at your August 13, 2007, Council meeting is a proposed text amendment amending Chapter 31 of the Code of Ordinances to add tighter regulations for the placement of utility-related structures in the public rights-of-way. The request for this amendment arose out of the installation by AT&T of a large number of boxes known as "VRAD" boxes in the public rights-of-way. I am not aware of any major issues in the City of Novi regarding the placement of these boxes, but a number of your neighboring communities, and others throughout southeastern Michigan, have had issues with these boxes being placed in the middle of sidewalks, close to corners at road intersections, directly adjacent to driveways, and in parking lots, among other inappropriate locations.

→ This ordinance is intended to prevent any such occurrences in the City.

Our office has been working with the City Engineers to provide reasonable requirements which are applicable to all utility and telecommunications companies. Chapter 31 was amended following the enactment of the METRO Act in 2002, and already contained a number of restrictions on use of the public rights-of-way. This ordinance will tighten up those restrictions and amend Chapter 31 as follows: adding a definition section, amending the plan submittal requirements, adding standards for installations in the right-of-way as well as on private property, adding standards for use of the right-of-way, creating standards for removal of installations in the right-of-way, and adding exemptions from the permitting requirements. Both the METRO Act and the newly enacted cable act clearly reserve to municipalities the right to regulate the public rights-of-way, and it is our opinion that these regulations are a reasonable exercise of that power. However, as we advised in our previous correspondence, AT&T has been vigorously objecting to any municipality attempting to enact restrictions on their use of the rights-of-way, and so it would not be surprising if a representative showed up to protest this proposed amendment.

Mayor Landry and City Council

August 3, 2007

Page 2

Tom Schultz will be present at the Council meeting on August 13<sup>th</sup> to discuss the matter in greater detail with you. In the meantime, please feel free to contact Tom or me, should you have any questions.

Very truly yours,



Kristin Bricker Kolb

KBK;jw

Enc.

c: Clay J. Pearson, City Manager  
Pamela W. Antil, Assistant City Manager  
Rob Hayes, City Engineer  
Brian Coburn, City Engineer  
Thomas R. Schultz, Esq.

962135\_1

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 31, "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES," ARTICLE I, "IN GENERAL," TO ADD A DEFINITION SECTION, AMEND THE PLAN SUBMITTAL REQUIREMENTS, ADD STANDARDS FOR INSTALLATIONS IN THE RIGHT-OF-WAY, ADD STANDARDS FOR USE OF THE RIGHT OF WAY, CREATE STANDARDS FOR REMOVAL OF INSTALLATIONS IN THE RIGHT-OF-WAY, AND TO ADD EXEMPTIONS FROM THE PERMITTING REQUIREMENTS.

THE CITY OF NOVI ORDAINS:

**Part I.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 – 2 to read as follows:

**Section 31-2. Definitions.**

As used in this chapter, the following words and terms shall have the following meanings:

*AASHTO* shall mean the American Association of State Highway and Transportation Officials.

*Crash Zone* shall mean the area five (5) feet from the back of a curb or 12 feet from the edge of the pavement of a traveled lane, whichever is greater.

*Facility or Facilities* shall mean the Utility's equipment or personal property, such as wires, cables, pipes or conduits, equipment cabinets, structures or other equipment used for the transmission of electrical current impulses, sounds, voices or communications, water, sewage, gas or other fuel.

*Public Right-of-Way* shall mean 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.

*Sight Triangle* shall mean a triangular-shaped portion of land established at roadway, highway, or street intersections in which there are restrictions on structures erected, placed or

planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection

*Utility* shall mean any public utility company, person, corporation or other entity, including, but not limited to telecommunication, water, sewer, gas and other fuel.

*Zone of Influence* shall mean the area within a 45 degree angle from a pipe invert.

## **PART II.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by re-numbering Section 31 - 2 as 31-3 and amending it to read as follows:

### **Section 31 – 3. Application; review; bond.**

- (a) [Unchanged.]
- (b) *Plan submittal requirements.*
  - (1) Plans submitted in conjunction with a request for a permit shall contain the following information:
    - a. A location map, with a minimum scale of 1" = 50' and north arrow, showing the location of the proposed facility in relation to the surrounding area.
    - b. Proprietor information, parcel identification number and/or addresses of all affected and adjacent parcels, and street names.
    - c. Location of the proposed facility, including proposed invert elevations of all structures, piping or appurtenances.
    - d. Any property lines within 50 feet of the proposed facility.
    - e. For the area 25 feet on either side of the proposed facility (including, but not limited to all proposed structures, transmission lines, and underground routing), the following items must be provided:
      - (i) Two-foot contours or strip topography of elevations.
      - (ii) Location of all structures, manholes, fire hydrants, trees or any other permanent physical objects. All structures must be labeled.
      - (iii) Location of any and all water courses.

- f. Length, size and type of each section of proposed pipe between structures.
  - g. A minimum of two benchmarks consistent with the datum utilized by local standards.
  - h. A note whether the proposed facility will be located within 500 feet of a waterbody or watercourse.
  - i. A traffic control plan shall be provided for any road closure proposed under Section 31-9.
- (2) For proposed facilities to be installed within road rights-of-way or adjacent to private or public roadways, the following additional items must be shown:
- a. All existing facilities within the road right-of-way or within 25 feet on either side of the proposed facility.
  - b. Pavement type and limits.
  - c. Existing and proposed right-of-way lines.
- (3) For proposed above-ground installation of facilities, the following additional items must be shown:
- a. Separate detail of each above-ground facility indicating all their dimensions.
  - b. If proposed within the sight triangle of the right-of-way, strip topography of elevations within 50 feet of the proposed facility to verify no sight obstructions.
  - c. Dimensions of the facility from existing pavement, property lines, right-of-way lines and other facilities.
  - d. Indicate proposed parking location, dimensions and method (i.e. gravel, grass pavers, etc.) to limit disruption for maintenance vehicles. Parking on non-motorized pathways is prohibited.
  - e. Show compliance with AASHTO standards for above-ground facility placement.
- (4) A landscaping plan indicating plant material of sufficient height and density to screen any above-ground proposed facility shall be required.

Said landscaping shall be suitable for the location and conditions, and shall be maintained and replaced as necessary by the Utility.

(b)(c) [Unchanged.]

(e)(d) [Unchanged.]

(e) Owners of property zoned for single-family residential use undertaking minor disruption of the public right-of-way are exempt from the requirements of this Section. For purposes of this Chapter, "minor disruption" shall be interpreted to mean excavation of less than two feet.

**Part III.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 – 4 to read as follows:

**Section 31-4. Standards for the Installation of Facilities in the Road Rights-of-Way or in Private Easements.**

- (a) All installation of Facilities under this Chapter shall comply with the following standards.
  - (1) Generally, proposed facilities must run in straight lines and parallel to road rights-of-way and/or existing facilities.
  - (2) Road crossings should be at a 90 degree angle to the road.
  - (3) The facilities shall not be located within the Zone of Influence of an existing or proposed sanitary sewer or water main, unless otherwise approved by the City Engineer or his or her designee. All underground facilities must maintain a minimum vertical clearance of 18 inches.
  - (4) If the facilities are proposed to be located in a public right-of-way, any above-ground facilities shall be placed at the extension of existing property lines that are perpendicular to the road right-of-way.
  - (5) Facilities proposed to be located above-ground shall be installed outside of the sight triangle in accordance with the AASHTO guidelines.
  - (6) Facilities proposed to be located above-ground are prohibited within any Crash Zone, and must be a minimum of three (3) feet off of any pedestrian pathways or sidewalks.

- (7) Unless provided otherwise herein, facilities proposed to be located underground must be installed at least four (4) feet below the center line of the road.
- (8) Facilities shall be of a neutral color such that they are in harmony with and blend in to the immediate surrounding area. Under no circumstances will primary colors be permitted.
- (9) Right-of-way approval from the Road Commission for Oakland County is required prior to the issuance of a construction permit for rights-of-way that are under the jurisdiction of the Road Commission.

(b) If the facility is proposed to be located on private property, the Utility must obtain the written consent of the property owner(s), which written consent shall be submitted with the application for a permit.

(c) Any zoning variances that may be required shall be obtained prior to issuance of a permit under this Chapter.

#### **Part IV.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 5 to read as follows:

#### **Section 31 – 5. Use of the public right-of-way.**

(a) Utility, its contractors, subcontractors, and its facilities shall not unduly burden or interfere with the present or future use of the public right-of-way. A Utility's facilities shall be installed and maintained so as to not endanger or injure persons or property on or about the public right-of-way. If the City reasonably determines that any portion of the facilities constitutes an undue burden or interference, following an approved installation, Utility, at its sole expense, shall modify the facilities or take such other actions as the City may determine is in the public interest to remove or alleviate the burden, and the Utility shall do so within a reasonable time period.

(b) Utility, its contractors and subcontractors shall immediately restore, at the Utility's sole cost and expense, in a manner approved by the City, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the facilities to a reasonably equivalent (or, at Utility's option, better) condition to that which existed prior to the disturbance. In the event that the Utility, its contractors or subcontractors fail to make such repair within a reasonable time, following notice and an opportunity to cure, the City may, but is not obligated to, make the repair and the Utility shall pay the costs incurred by the City plus an administrative fee in the amount of 25% for such repair. All pedestrian pathways and sidewalks disturbed as a result of installation, operation, maintenance or removal of Facilities must be restored to current ADA requirements.



(c) The construction and installation of the facilities shall be performed in accordance with the plans approved by the City. The open cut of any public right-of-way shall be coordinated with the City Engineer or his or her designee. The Utility shall install and maintain the facilities in a reasonably safe condition. If the existing poles in the public right-of-way are overburdened or unavailable for the Utilities use, or the facilities of all users of the poles are required to go underground then the Utility shall, at its expense, place such portion of its Facilities underground, unless the City approves an alternate location. The Utility may perform maintenance on the facilities without prior approval of the City, provided that the Utility shall obtain any and all permits required by the City in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by the City.

(d) The Utility shall coordinate its construction and all other work in the public right-of-way with the City's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing"). The goals of such coordination shall be to encourage the Utility to conduct all work in the public right-of-way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the City.

(e) If the City vacates or consents to the vacation of a public right-of-way within its jurisdiction, and such vacation necessitates the removal and relocation of the Utility's facilities in the vacated public right-of-way, the Utility shall remove its facilities at its sole cost and expense when ordered to do so by the City or a court of competent jurisdiction. The Utility shall relocate its facilities to such alternate location as the City and the Utility mutually agree upon, applying reasonable engineering standards.

(f) If the City requests the Utility to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, or other public projects, the Utility shall relocate, protect, support, disconnect, or remove its facilities, at its sole cost and expense, including where necessary to such alternate location as the City and the Utility mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.

(g) The City shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of the Utility if such action is necessary due to a public emergency or the failure of the Utility to meet the requirements of this Section. If reasonable to do so under the circumstances, the City shall attempt to provide advance notice to the Utility. Public emergency shall be any condition which 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, water main breaks, hazardous material spills, etc. The Utility 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.

(h) If eligible to join, and if it is not already a member, the Utility 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.

(i) If the Utility has its facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then the Utility shall relocate its facilities underground in the same location at the Utility's sole cost and expense.

(j) All personnel of the Utility 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 the Utility's name, their name and photograph. The Utility shall account for all identification cards at all times. Every service vehicle of the Utility and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Utility's name and telephone number.

#### **Part V.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 6 to read as follows:

#### **Section 31-6. Removal of Facilities.**

(a) *Underground Facilities.* As soon as practicable after the Utility has discontinued the use of its facilities, the Utility, or its successors and assigns shall remove all of its facilities from the public right-of-way. The Utility shall not remove any underground portions of the facilities which requires trenching or other opening of the public right-of-way except with the prior written approval of the City Engineer or his or her designee. All removals shall be at Utility's sole cost and expense.

(b) *Above Ground.* As soon as practicable after the Utility has discontinued the use of its facilities, the Utility, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by the City Engineer or his or her designee, remove from the public right-of-way all above-ground elements of its facilities, including but not limited to poles, pedestal mounted terminal boxes, equipment cabinets, and lines attached to or suspended from poles.

(c) *Schedule.* The schedule and timing of removal shall be subject to approval by City Engineer or his or her designee. Unless extended by the City Engineer or his or her designee, removal shall be completed not later than twelve (12) months following termination of use of the facility. Portions of the facilities in the public right-of-way which are not removed within such time period shall be deemed abandoned and, at the option of the City, upon prior written notice to the Utility, title to those portions of the abandoned facilities shall vest in the City.

**Part VI.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 7 to read as follows:

**Section 31 – 7. As-built plans.**

- (a) Each Utility or other entity installing facilities in, on, or under, land within the City shall maintain plans showing the exact location of such facilities after such installation is completed.
- (b) Two (2) copies of such “as built” plans shall be submitted to the City Engineer within thirty (30) days of the completion of the installation.
- (c) The performance guarantee required under Section 31-3(c) shall not be released by the City until the requirements of this Section are complied with.

**Part VII.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 8 to read as follows:

**Section 31 – 8. Exemptions.**

The following types of installations shall be exempt from the permitting requirements of this Chapter:

- (a) Connection from a main or branch utility line, including, but not limited to wires, cables, pipes, conduits or other equipment used for the transmission of electrical current impulses, sounds, voices or communications, water sewage, gas or other fuel, to an individual user or subscriber provided such connection does not service more than one user, does not cross a public street, and does not cross the frontage of more than one property.
- (b) Any wires, cables, pipes, conduits or other equipment which are installed at the direction of, by, and/or for the benefit of the City.

**Part VIII.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended to re-number Section 31-3 as 31-9 and Section 31-4 as 31-10 as follows:

**Section 31 – 9. Closing of streets, highways, and alleys.**

[Unchanged.]

8/3/2007

**Section 31 – 10. Violations.**

[Unchanged.]

**Part IX.**

**Savings.** This amendment does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture, or punishment, pending or incurred prior to the amendment.

**Part X.**

**Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Part XI.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED AND ADOPTED BY THE NOVI CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
DAVID LANDRY – MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Date of Public Hearing \_\_\_\_\_  
Date of Adoption \_\_\_\_\_  
Date of Publication of \_\_\_\_\_  
Notice of Adoption \_\_\_\_\_

8/3/2007

**CERTIFICATE OF ADOPTION**

I hereby certify that the foregoing is true and complete copy of the Ordinance passed at the \_\_\_\_\_ meeting of the Novi City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

948299\_2



MEMORANDUM

To: Clay Pearson, City Manager  
 Pam Antil, Assistant City Manager

From: Rob Hayes, City Engineer *RH*

Re: Proposed Right-of-Way Ordinance Revisions

Date: July 26, 2007

7/26/07

*To: Mayor and City Council Members*

*For future City Council considerations; early comments welcome.*

\*\*\*\*\*

As you know, a franchise telecommunications utility (AT&T) has begun to install rather large utility cabinets in the City's right-of-way. As Brian Coburn reports in the attached July 23<sup>rd</sup> memo, the installation of these types of aboveground structures may damage buried public utilities (water, sewer, storm) and would make it difficult to properly maintain underlying utilities. Additionally, the cabinets may obstruct safe sight distances and pose aesthetic concerns. \*

Because these cabinets pose potential risks to public health, safety and welfare, Engineering staff and the City Attorney's office have been working with neighboring communities to develop ordinance language to minimize the impact of these installations (Kristin Kolb's July 3, 2007 letter, attached). The attached draft Ordinance text amendments to Chapter 31 (Streets, Sidewalks and Other Public Places) add requirements to address these and other types of franchise utility installations in the right-of-way. The proposed revisions add more stringent requirements for plan submittal so that the plans are detailed enough for City staff to perform comprehensive reviews, and the revisions add a requirement for the utility to submit record drawings that depict "as-built" conditions once an installation is complete. ||

We will be presenting these proposed changes at the August 13<sup>th</sup> City Council meeting. In the meantime, please let me know if you have any questions, comments or concerns in regards to the proposed Ordinance revisions.

cc: Brian Coburn, Civil Engineer  
 Tom Schultz, City Attorney



**MEMORANDUM**

To: Rob Hayes, P.E.; City Engineer  
From: Brian Coburn, P.E., Civil Engineer  
Re: **Proposed Right-of-way Ordinance Revisions**  
Date: July 23, 2007

\*\*\*\*\*

Over the past several months, I have had the opportunity to meet with representatives of several of our neighboring communities in southwestern Oakland County to discuss the installation of above ground structures within the right-of-way, such as the new beige colored boxes being installed by AT&T (formerly known as SBC). The attached photos show some of the existing structures that have already been installed within our right-of-way. The primary goal of the group was to write a common draft ordinance that would regulate the locations of above ground facilities.

Please find attached to this memo a draft ordinance that we prepared in cooperation with the City Attorney and several other communities in southwestern Oakland County including White Lake Township, Commerce Township, Village of Wolverine Lake, City of Wixom, Lyon Township, and Milford Township. Through several meetings with these communities, some common issues emerged, which included:

- Installation above ground structures on top of public utilities making it difficult and costly to maintain the public utilities.
- Problems with sight distance caused by above ground facilities being placed within sight lines.
- Damage to public utilities during the installation of the franchise utilities.
- Complaints from residents about the appearance and location of above ground facilities.
- The lack of detail in the plans that are being submitted by the franchise utilities for permit applications, which make it more difficult to determine the potential impact.
- The failure of utilities to provide required as-built information following construction.

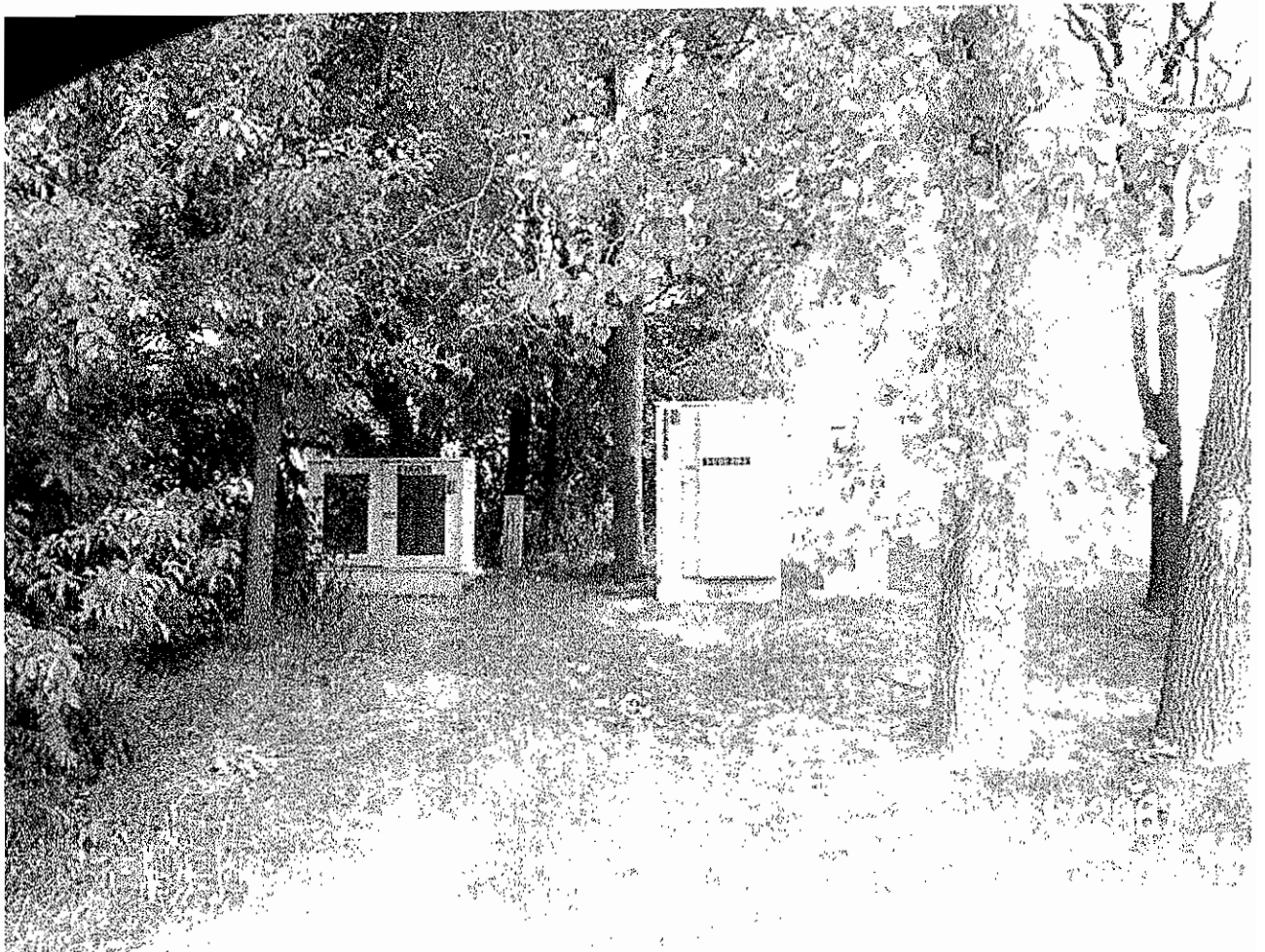
The draft ordinance addresses these issues and would provide additional requirements that aim to protect not only the health, safety and welfare of the public, but also to protect the public utilities from damage and to retain access to our utilities for maintenance.

There have been approximately two dozen of these boxes approved for installation within the city at this time. We have another 28 of these installations that are in some stage of review by our department. It is our understanding that in order to provide video cable service to Novi there will be several more of these installations, although AT&T will not provide us with this information claims that it is proprietary. One source states that the boxes must be installed within 400 feet of the next one.

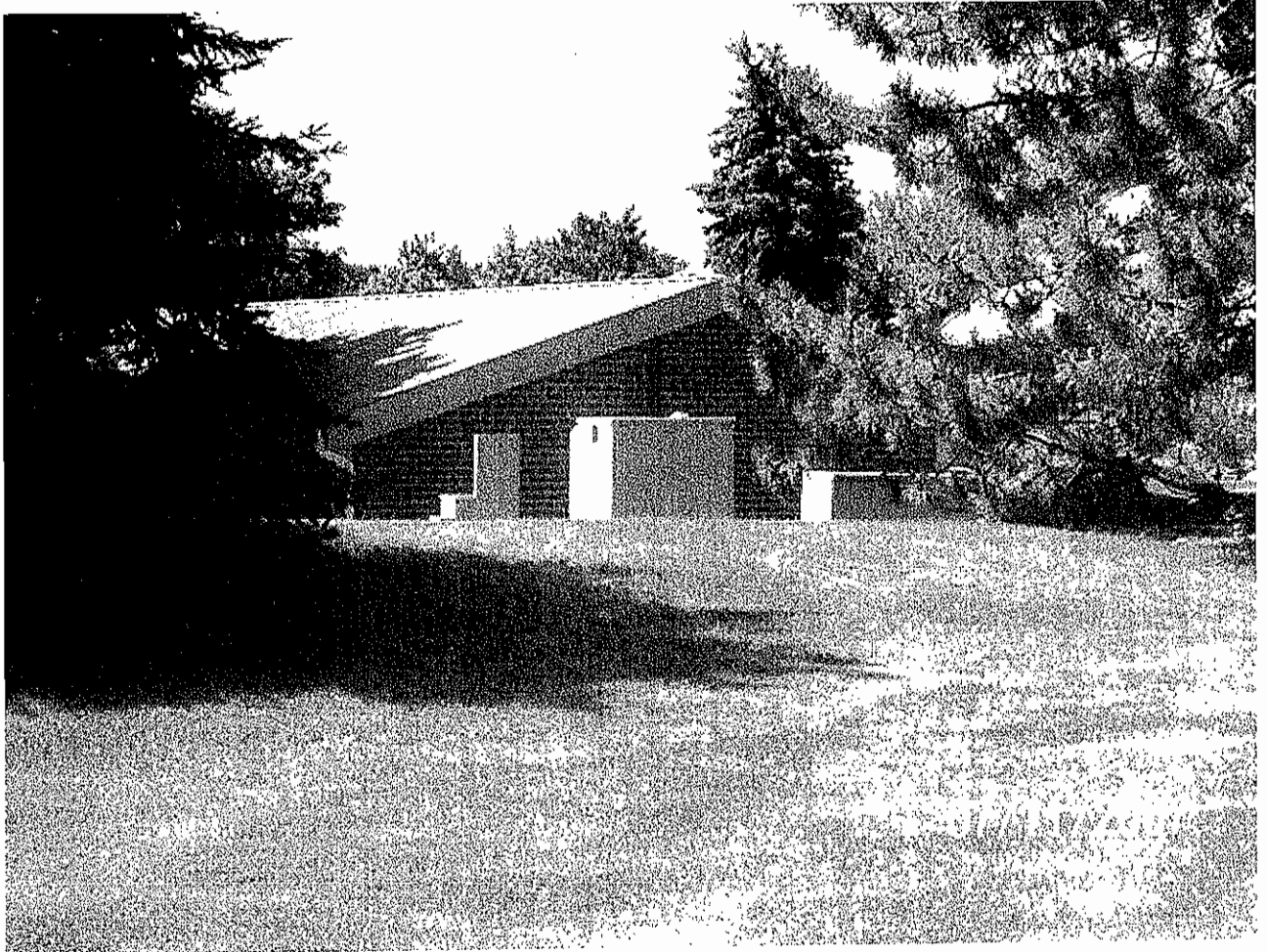
Please review the attached and let me know if you have any questions.

cc: Clay Pearson, City Manager  
Pam Antil, Assistant City Manager  
Kristin Kolb, Secret Wardle





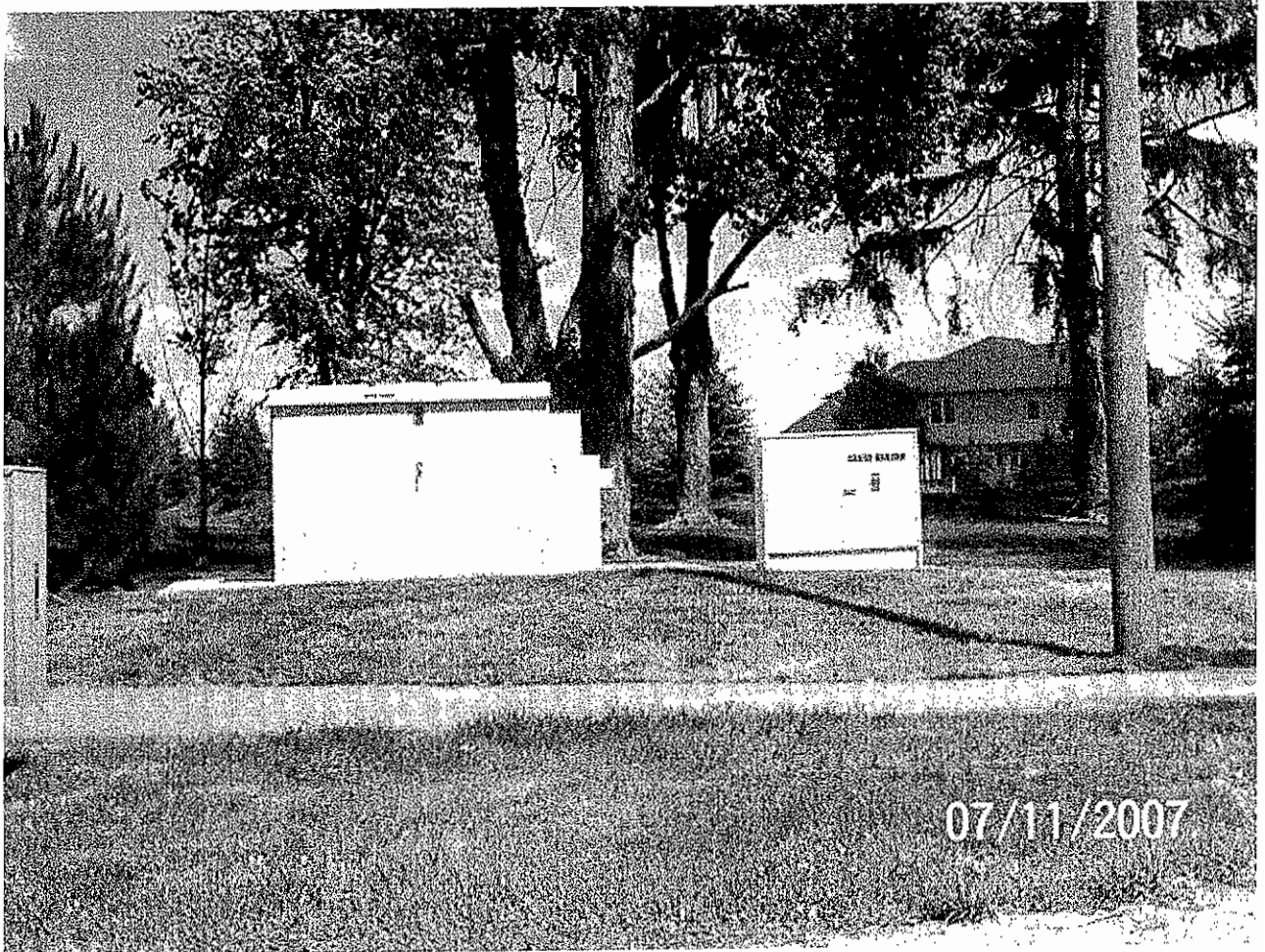
9 MILE AND BROOK FOREST



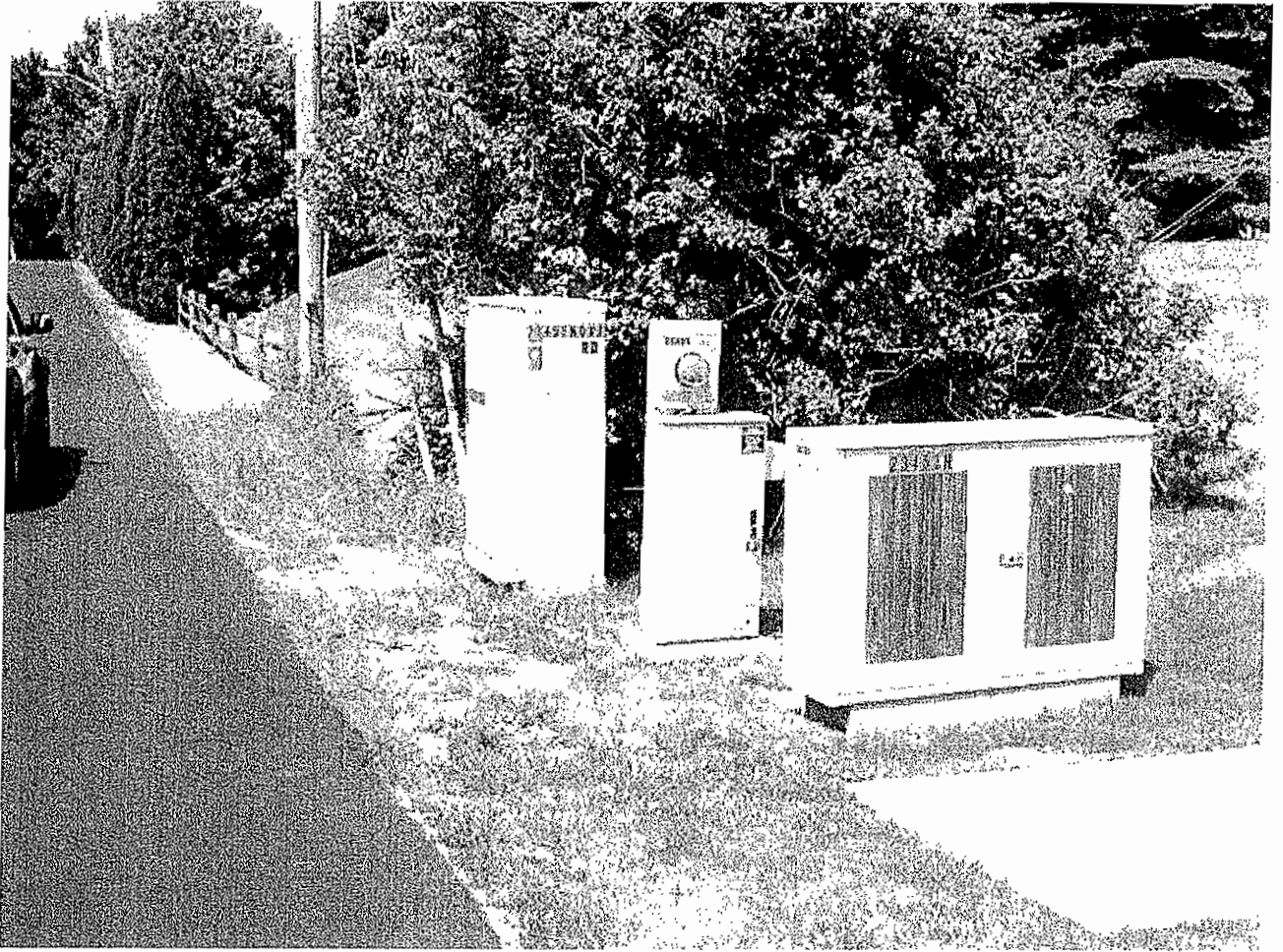
9 MILE\_E OF PEACH TREE



CRANBROOK DR & 9 MILE



NAPIER & SEAGLEN DR—One of the biggest ones we have to date.



ORCHARD HILLS CHURCH\_NOVI RD & ALGONQUIN DR

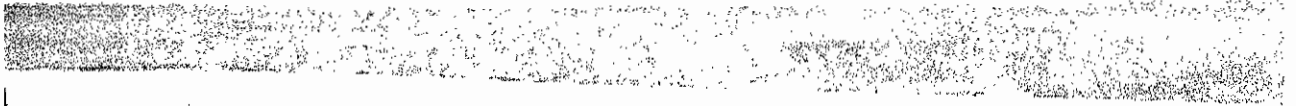
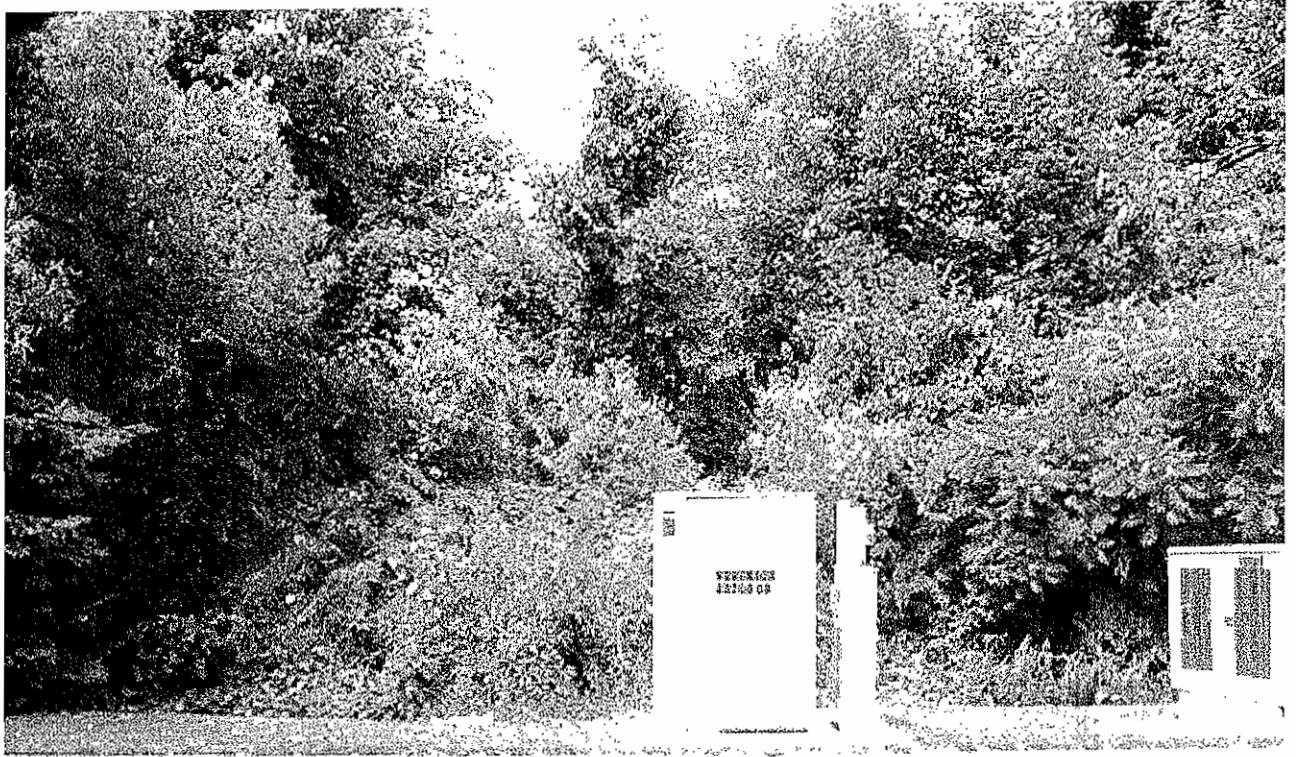


ROW05-0160\_11 MILE & ARCADIA



ROW06-0007\_CENTER ST & 9 MILE\_1

We suspect the landscaping was completed by the homeowner or association, not AT&T



ROW06-0023\_10 MILE & BETHANY WAY





ROW06-0055\_8 MILE\_W OF MEADOWBROOK



ROW06-0076\_CENTER ST & GALWAY

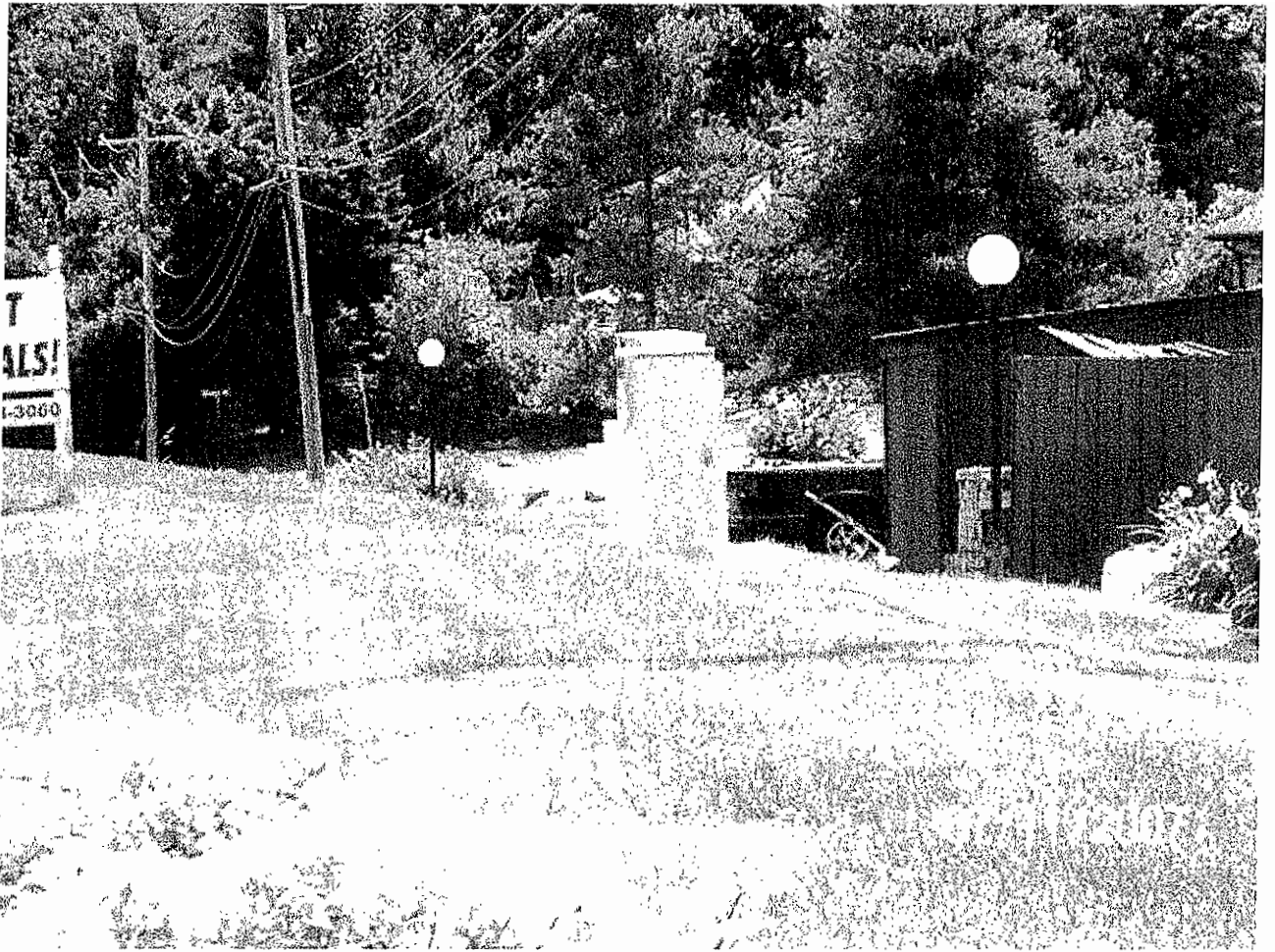


ROW06-0094\_SOUTH LAKE DR & LILLEY  
One of our biggest boxes located next to Walled Lake.

07/05/2007



ROW06-0095 9 MILE & NORTH HILLS DR\_1



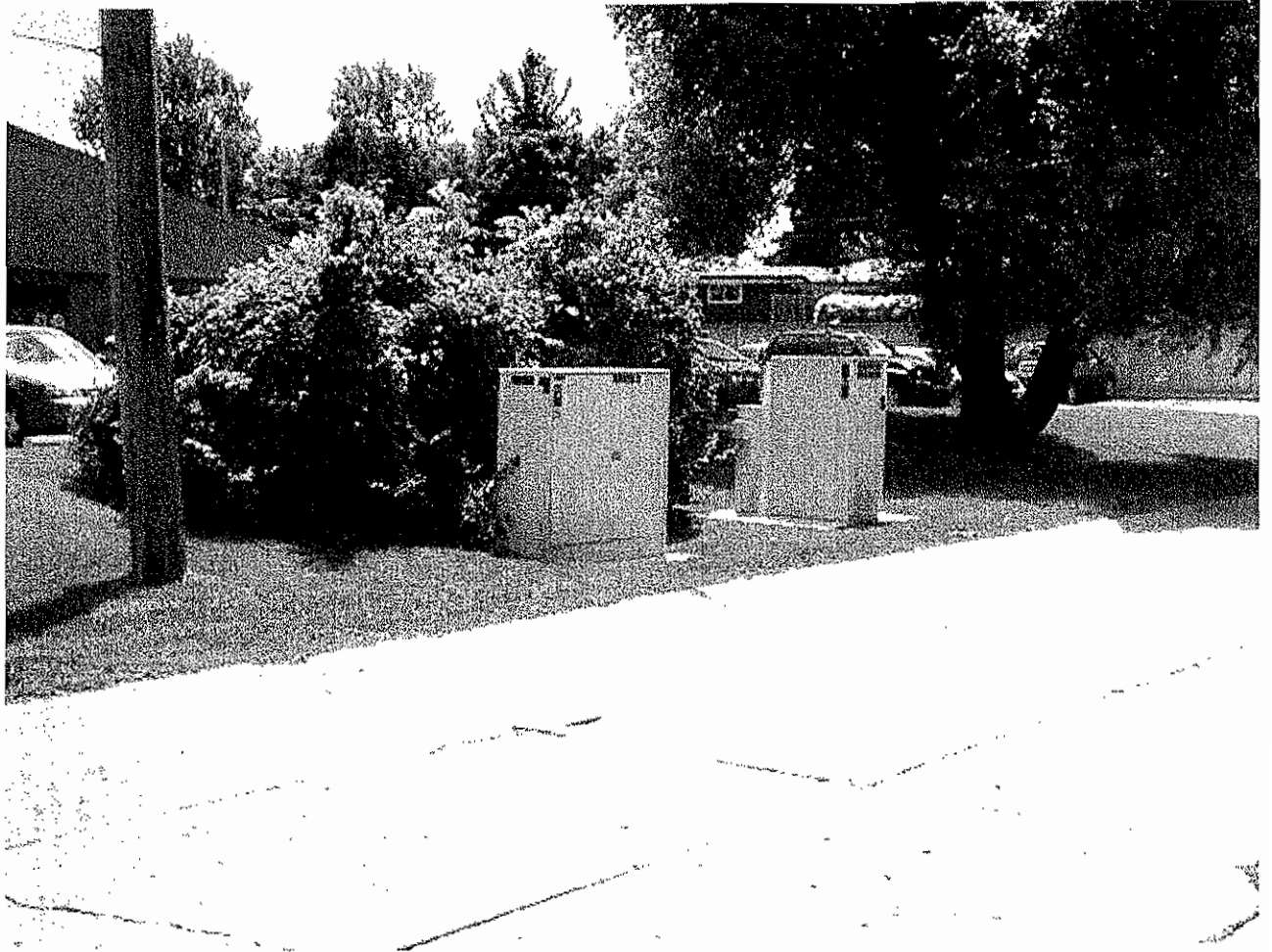
ROW06-0095 9 MILE & NORTH HILLS DR\_2



ROW06-0115\_14 MILE & EAST LAKE DR

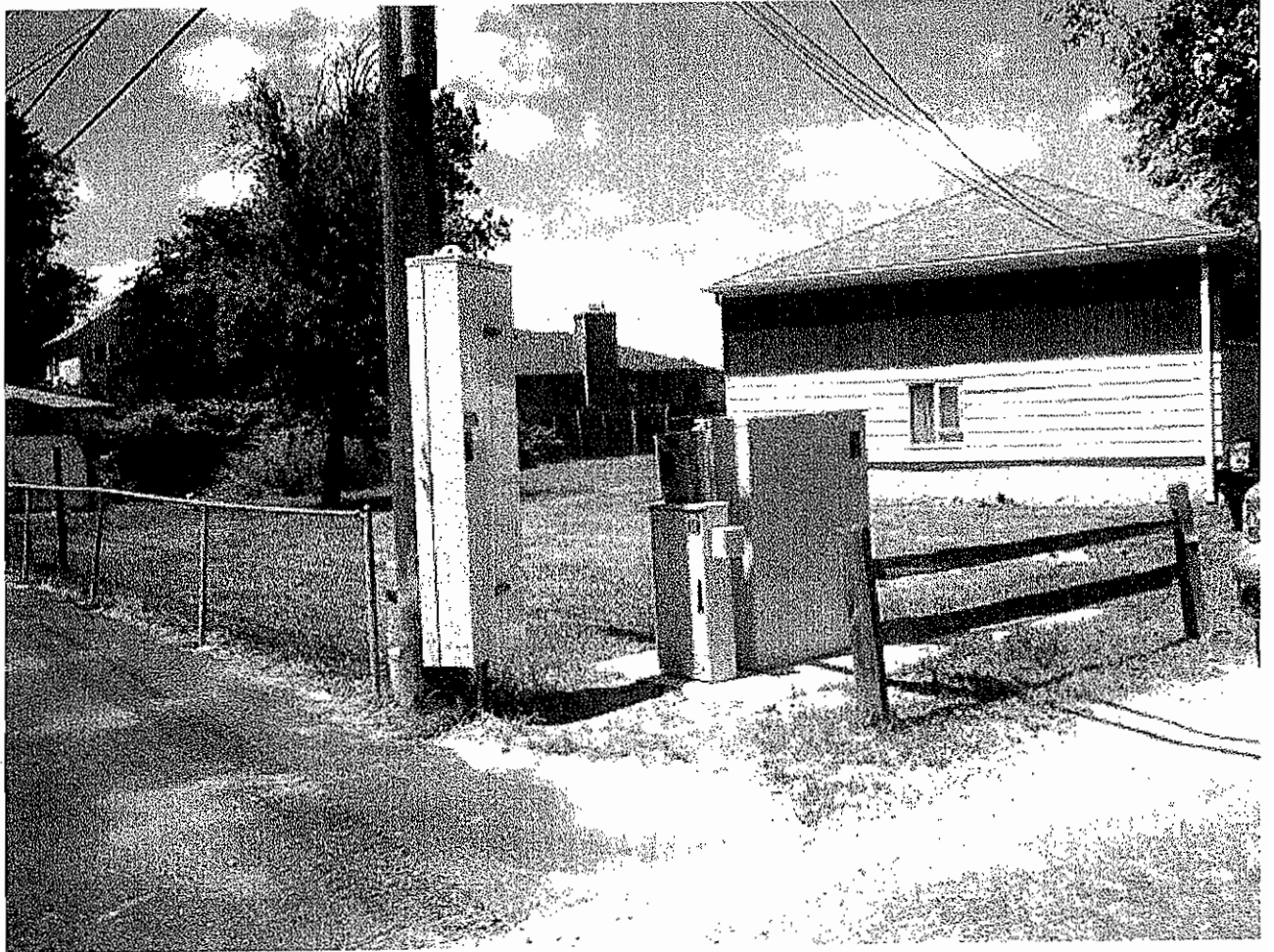


ROW06-0116\_MARTIN\_S OR 13 MILE



RWO06-0125\_10 MILE\_W OF HAGGERTY





SOUTH LAKE DR & BUFFINGTON DR



July 3, 2007

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Clay J. Pearson, City Manager  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

Kristin B. Kolb  
Direct: 248-539-2837  
kkolb@secretwardle.com

Re: *Proposed Ordinance Regulating Utility Structures in Rights-of-Way*  
Our File No. 55142 NOV

Dear Mr. Pearson:

As you may have previously discussed with our office, AT&T is in the process of installing a large number of utility cabinets in the City as part of the introduction of its video service (cable) and internet products. While there is no way to predict exactly how many of these cabinets, known as VRAD boxes, will be installed within the City (AT&T claims this is "proprietary" information), we believe there will be quite a few. We have been advised that each VRAD box must be installed within 400 feet of the next, and within 100 feet of a power source. For those communities where AT&T, through the submission of its Uniform Video Service Local Franchise Agreement, has indicated an intent to service the entire community, it is possible these VRAD boxes may number in the hundreds.

While it is our opinion that AT&T is required to comply with the requirements of the Metropolitan Extension Telecommunications Rights-of-Way Oversight ("METRO") Act, as well as the City's local right-of-way ordinances with respect to permitting for any disturbance of the rights-of-way, the METRO Act and local ordinances were not necessarily drafted to address several issues that arise out of this new technology: primarily the size of the boxes, their color, where within the right-of-way they are placed, and landscaping/shielding.

As a result of the proliferation of the VRAD boxes, a number of communities are pursuing ordinances or amendments to their existing ordinances intended to create reasonable regulations to address the concerns. The regulations would apply equally to all "utilities" or other users of the rights-of-way, and would address, among other things, safety and aesthetic issues. Such an ordinance might also include provisions regulating the placement of utility cabinets/facilities/equipment on private property, and provisions addressing situations when a user installs their equipment above or immediately adjacent to a public utility line.

We have been provided with a copy of the draft ordinance that Commerce Township's legal counsel has prepared for that community's consideration. While it provides a good starting point, it does not contain specific regulations aimed at those issues causing the greatest concern to the City. To add some "teeth" to the ordinance

Clay J. Pearson, City Manager  
July 3, 2007  
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to address what we are hearing are the City's concerns, changes to the draft would need to be made.

If you are interested in presenting such an ordinance to the Council for consideration, please let us know and we will prepare a draft.

The relative lack of substance in the Commerce ordinance results from the fact that AT&T has vigorously objected more stringent regulations in Commerce Township, Huntington Woods, Birmingham, and Royal Oak. It has threatened to make Huntington Wood's ordinance a "test case" in circuit court and has appeared before the Commerce Township Board of Trustees and the Huntington City Council when their respective ordinances have been up for first reading, opposing any regulation whatsoever. While we think that such regulations are necessary, and probably enforceable for the protection of the public health, safety, and welfare, adoption of a more vigorous regulatory approach may result in a legal tussle with AT&T at potentially great expense to the City.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Kristin B. Kolb

KBK/jes

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 31, "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES," ARTICLE I, "IN GENERAL," TO PROVIDE \_\_\_\_\_

THE CITY OF NOVI ORDAINS:

**Part I.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 – 2 to read as follows:

**Section 31-2. Definitions.**

As used in this chapter, the following words and terms shall have the following meanings:

AASHTO shall mean the American Association of State Highway and Transportation Officials.

Crash Zone shall mean the area five (5) feet from the back of a curb or 12 feet from the edge of the pavement of a traveled lane, whichever is greater.

Facility or Facilities shall mean the Utility's equipment or personal property, such as wires, cables, pipes or conduits, equipment cabinets, structures or other equipment used for the transmission of electrical current impulses, sounds, voices or communications, water, sewage, gas or other fuel.

Public Right-of-Way shall mean 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.

Sight Triangle shall mean a triangular-shaped portion of land established at roadway, highway, or street intersections in which there are restrictions on structures erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection

Utility shall mean any public utility company, person, corporation or other entity, including, but not limited to telecommunication, water, sewer, gas and other fuel.

Zone of Influence shall mean the area within a 45 degree angle from a pipe invert.

## **PART II.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by re-numbering Section 31 - 2 as 31-3 and amending it to read as follows:

### **Section 31 – 2 3. Application; review; bond.**

(a) [Unchanged.]

(b) Plan submittal requirements.

(1) Plans submitted in conjunction with a request for a permit shall contain the following information:

a. A location map, with a minimum scale of 1" = 50' and north arrow, showing the location of the proposed facility in relation to the surrounding area.

b. Proprietor information, parcel identification number and/or addresses of all affected and adjacent parcels, and street names.

c. Location of the proposed facility, including proposed invert elevations of all structures, piping or appurtenances.

d. Any property lines within 50 feet of the proposed facility.

e. For the area 25 feet on either side of the proposed facility (including, but not limited to all proposed structures, transmission lines, and underground routing), the following items must be provided:

(i) Two-foot contours or strip topography of elevations.

(ii) Location of all structures, manholes, fire hydrants, trees or any other permanent physical objects. All structures must be labeled.

(iii) Location of any and all water courses.

f. Length, size and type of each section of proposed pipe between structures.

- g. A minimum of two benchmarks consistent with the datum utilized by local standards.
  - h. A note whether the proposed facility will be located within 500 feet of a waterbody or watercourse.
  - i. A traffic control plan shall be provided for any road closure proposed under Section 31-9.
- (2) For proposed facilities to be installed within road rights-of-way or adjacent to private or public roadways, the following additional items must be shown:
- a. All existing facilities within the road right-of-way or within 25 feet on either side of the proposed facility.
  - b. Pavement type and limits.
  - c. Existing and proposed right-of-way lines.
- (3) For proposed above-ground installation of facilities, the following additional items must be shown:
- a. Separate detail of each above-ground facility indicating all their dimensions.
  - b. If proposed within the sight triangle of the right-of-way, strip topography of elevations within 50 feet of the proposed facility to verify no sight obstructions.
  - c. Dimensions of the facility from existing pavement, property lines, right-of-way lines and other facilities.
  - d. Indicate proposed parking location, dimensions and method (i.e. gravel, grass pavers, etc.) to limit disruption for maintenance vehicles. Parking on non-motorized pathways is prohibited.
  - e. Show compliance with AASHTO standards for above-ground facility placement.
- (4) A landscaping plan indicating plant material of sufficient height and density to screen any above-ground proposed facility shall be required. Said landscaping shall be suitable for the location and conditions, and shall be maintained and replaced as necessary by the Utility.

(b)(c) [Unchanged.]

(e)(d) [Unchanged.]

(e) Owners of property zoned for single-family residential use undertaking minor disruption of the public right-of-way are exempt from the requirements of this Section. For purposes of this Chapter, "minor disruption" shall be interpreted to mean excavation of less than two feet.

### **Part III.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 – 4 to read as follows:

#### **Section 31-4. Standards for the Installation of Facilities in the Road Rights-of-Way or in Private Easements.**

(a) All installation of Facilities under this Chapter shall comply with the following standards.

- (1) Generally, proposed facilities must run in straight lines and parallel to road rights-of-way and/or existing facilities.
- (2) Road crossings should be at a 90 degree angle to the road.
- (3) The facilities shall not be located within the Zone of Influence of an existing or proposed sanitary sewer or water main, unless otherwise approved by the City Engineer or his or her designee. All underground facilities must maintain a minimum vertical clearance of 18 inches.
- (4) If the facilities are proposed to be located in a public right-of-way, any above-ground facilities shall be placed at the extension of existing property lines that are perpendicular to the road right-of-way.
- (5) Facilities proposed to be located above-ground shall be installed outside of the sight triangle in accordance with the AASHTO guidelines.
- (6) Facilities proposed to be located above-ground are prohibited within any Crash Zone, and must be a minimum of three (3) feet off of any pedestrian pathways or sidewalks.
- (7) Unless provided otherwise herein, facilities proposed to be located underground must be installed at least four (4) feet below the center line of the road.

(8) Facilities shall be of a neutral color such that they are in harmony with and blend in to the immediate surrounding area. Under no circumstances will primary colors be permitted.

(9) Right-of-way approval from the Road Commission for Oakland County is required prior to the issuance of a construction permit for rights-of-way that are under the jurisdiction of the Road Commission.

(b) If the facility is proposed to be located on private property, the Utility must obtain the written consent of the property owner(s), which written consent shall be submitted with the application for a permit.

(c) Any zoning variances that may be required shall be obtained prior to issuance of a permit under this Chapter.

#### **Part IV.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 5 to read as follows:

#### **Section 31 – 5. Use of the public right-of-way.**

(a) Utility, its contractors, subcontractors, and its facilities shall not unduly burden or interfere with the present or future use of the public right-of-way. A Utility's facilities shall be installed and maintained so as to not endanger or injure persons or property on or about the public right-of-way. If the City reasonably determines that any portion of the facilities constitutes an undue burden or interference, following an approved installation, Utility, at its sole expense, shall modify the facilities or take such other actions as the City may determine is in the public interest to remove or alleviate the burden, and the Utility shall do so within a reasonable time period.

(b) Utility, its contractors and subcontractors shall immediately restore, at the Utility's sole cost and expense, in a manner approved by the City, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the facilities to a reasonably equivalent (or, at Utility's option, better) condition to that which existed prior to the disturbance. In the event that the Utility, its contractors or subcontractors fail to make such repair within a reasonable time, following notice and an opportunity to cure, the City may, but is not obligated to, make the repair and the Utility shall pay the costs incurred by the City plus an administrative fee in the amount of 25% for such repair. All pedestrian pathways and sidewalks disturbed as a result of installation, operation, maintenance or removal of Facilities must be restored to current ADA requirements.

(c) The construction and installation of the facilities shall be performed in accordance with the plans approved by the City. The open cut of any public right-of-way shall be coordinated with the City Engineer or his or her designee. The Utility shall install and



maintain the facilities in a reasonably safe condition. If the existing poles in the public right-of-way are overburdened or unavailable for the Utilities use, or the facilities of all users of the poles are required to go underground then the Utility shall, at its expense, place such portion of its Facilities underground, unless the City approves an alternate location. The Utility may perform maintenance on the facilities without prior approval of the City, provided that the Utility shall obtain any and all permits required by the City in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by the City.

(d) The Utility shall coordinate its construction and all other work in the public right-of-way with the City's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing"). The goals of such coordination shall be to encourage the Utility to conduct all work in the public right-of-way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the City.

(e) If the City vacates or consents to the vacation of a public right-of-way within its jurisdiction, and such vacation necessitates the removal and relocation of the Utility's facilities in the vacated public right-of-way, the Utility shall remove its facilities at its sole cost and expense when ordered to do so by the City or a court of competent jurisdiction. The Utility shall relocate its facilities to such alternate location as the City and the Utility mutually agree upon, applying reasonable engineering standards.

(f) If the City requests the Utility to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, or other public projects, the Utility shall relocate, protect, support, disconnect, or remove its facilities, at its sole cost and expense, including where necessary to such alternate location as the City and the Utility mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.

(g) The City shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of the Utility if such action is necessary due to a public emergency or the failure of the Utility to meet the requirements of this Section. If reasonable to do so under the circumstances, the City shall attempt to provide advance notice to the Utility. Public emergency shall be any condition which 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, water main breaks, hazardous material spills, etc. The Utility 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.

(h) If eligible to join, and if it is not already a member, the Utility 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.

(i) If the Utility has its facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then the Utility shall relocate its facilities underground in the same location at the Utility's sole cost and expense.

(j) All personnel of the Utility 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 the Utility's name, their name and photograph. The Utility shall account for all identification cards at all times. Every service vehicle of the Utility and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Utility's name and telephone number.

#### **Part V.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 6 to read as follows:

#### **Section 31-6. Removal of Facilities.**

(a) Underground Facilities. As soon as practicable after the Utility has discontinued the use of its facilities, the Utility, or its successors and assigns shall remove all of its facilities from the public right-of-way. The Utility shall not remove any underground portions of the facilities which requires trenching or other opening of the public right-of-way except with the prior written approval of the City Engineer or his or her designee. All removals shall be at Utility's sole cost and expense.

(b) Above Ground. As soon as practicable after the Utility has discontinued the use of its facilities, the Utility, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by the City Engineer or his or her designee, remove from the public right-of-way all above-ground elements of its facilities, including but not limited to poles, pedestal mounted terminal boxes, equipment cabinets, and lines attached to or suspended from poles.

(c) Schedule. The schedule and timing of removal shall be subject to approval by City Engineer or his or her designee. Unless extended by the City Engineer or his or her designee, removal shall be completed not later than twelve (12) months following termination of use of the facility. Portions of the facilities in the public right-of-way which are not removed within such time period shall be deemed abandoned and, at the option of the City, upon prior written notice to the Utility, title to those portions of the abandoned facilities shall vest in the City.

**Part VI.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 7 to read as follows:

**Section 31 – 7. As-built plans.**

(a) Each Utility or other entity installing facilities in, on, or under, land within the City shall maintain plans showing the exact location of such facilities after such installation is completed.

(b) Two (2) copies of such “as built” plans shall be submitted to the City Engineer within thirty (30) days of the completion of the installation.

(c) The performance guarantee required under Section 31-3(c) shall not be released by the City until the requirements of this Section are complied with.

**Part VII.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended by adding a new Section 31 - 8 to read as follows:

**Section 31 – 8. Exemptions.**

The following types of installations shall be exempt from the permitting requirements of this Chapter:

(a) Connection from a main or branch utility line, including, but not limited to wires, cables, pipes, conduits or other equipment used for the transmission of electrical current impulses, sounds, voices or communications, water sewage, gas or other fuel, to an individual user or subscriber provided such connection does not service more than one user, does not cross a public street, and does not cross the frontage of more than one property.

(b) Any wires, cables, pipes, conduits or other equipment which are installed at the direction of, by, and/or for the benefit of the City.

**Part VIII.**

That Chapter 31, Streets, Sidewalks and Other Public Places, Article I, is hereby amended to re-number Section 31-3 as 31-9 and Section 31-4 as 31-10 as follows:

**Section 31 – 3 9. Closing of streets, highways, and alleys.**

[Unchanged.]

**Section 31 – 4 10. Violations.**

[Unchanged.]

**Part IX.**

**Savings.** This amendment does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture, or punishment, pending or incurred prior to the amendment.

**Part X.**

**Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Part XI.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED AND ADOPTED BY THE NOVI CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
DAVID LANDRY – MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Date of Public Hearing \_\_\_\_\_  
Date of Adoption \_\_\_\_\_  
Date of Publication of \_\_\_\_\_  
Notice of Adoption \_\_\_\_\_

Draft  
7/26/2007

**CERTIFICATE OF ADOPTION**

I hereby certify that the foregoing is true and complete copy of the Ordinance passed at the \_\_\_\_\_ meeting of the Novi City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

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