

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF HOLLAND, MICHIGAN, BEING ORDINANCE NO. \_\_\_\_\_ OF THE CITY OF HOLLAND BY ADDING A NEW ARTICLE III, CONSISTING OF SECTIONS 7-63 THROUGH 7-72, TO CHAPTER 7 OF SAID CODE.

THE CITY OF HOLLAND HEREBY AMENDS THE ORDINANCE CODE OF THE CITY OF HOLLAND AS FOLLOWS:

**CHAPTER 7**

**Article III.**

**Municipal Broadband Services.**

**Sec. 7-63 Findings and Purpose.**

- (a) The City of Holland, acting by and through its Holland Board of Public Works (“HBPW”) provides “broadband internet access transport services” as such term is defined in Act No. 49 of the Public Acts of 2002 (effective November 1, 2002), MCL 484.3101, *et seq.* (“Act”).
- (b) Before December 31, 2001, the HBPW owned and operated telecommunications facilities within the City of Holland and Holland Township that provides broadband internet access transport service.
- (c) The HBPW expanded its delivery of broadband internet access transport services beyond the service territory existing before December 31, 2001 in order to effectuate the purposes of Holland City Charter, the Act, and such other authorized and delegated powers and authority permitted by law.
- (d) Prior to November 1, 2005, the HBPW owned and operated telecommunications facilities within other public entity boundaries.
- (e) Prior to November 1, 2005, the HBPW and City conducted a cost/benefit analysis (“Business Plan”) as required by MCL 484.3114(b) and public hearings on the HBPW business plan for providing broadband internet access transport services to third parties and conducted a hearing on the Business Plan.
- (f) The HBPW and City have also secured METRO Act permits (Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002) from the City and neighboring communities in connection with its utilization of public right of ways for provision of such third party services since 2003.
- (g) As a consequence of the HBPW’s pre-existing telecommunication services and extra

territorial location of such services prior to November 1, 2005, limitations within Michigan's Telecommunications Act, MCL 484.2252 restricting extra territorial services are not applicable to the HBPW and City.

- (h) The HBPW has prepared an updated business plan that projects revenue, capital expenses and operating and maintenance expenses for three years for provision of broadband services, consistent with the METRO Act and Uniform Budget and Accounting Act, MCL 141.436.
- (i) The City Charter, Sections 12.3 and 12.15, reserves to the City the power "to construct, own, operate, improve, enlarge, extend, repair and maintain, either within or without its corporate limits" public utilities.
- (j) In order to recognize the value and utility of existing broadband internet access transport services facilities and systems installed and operated by the City of Holland, both within and outside the City, and to promote the public health, safety, morals, general welfare, security, prosperity and contentment of the City and its residents, the City does provide authorization by this Article for construction and operation of infrastructure needed to provide broadband services and third party access to broadband internet access transport services within or without its corporate limits.

**Sec. 7-64 Terms Defined.**

The terms used in this Article III shall have the same meanings as such terms are defined in Article II of Chapter 7 of the Holland City Ordinances and as otherwise defined by Michigan law.

**Sec. 7-65 Approval of Business Plan.**

In accordance with MCL §484.3114, Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Public Act 48 of 2002, the City has prepared reasonable projections of at least a 3-year cost-benefit analysis identifying and disclosing the total projected direct costs of and the revenues to be derived from constructing the telecommunication facilities in providing the broadband services directly and through a broadband internet access transport service to third parties. ("Business Plan").

**Sec. 7-66 Operation of Broadband internet access service as part of Electric Utility.**

The City shall operate its broadband services, including but not limited to dark fiber leasing, active Ethernet, shared gigabit, and Internet access for wholesale or retail to commercial or residential customers, as part of its electric utility, operated by the Holland Board of Public Works.

**Sec. 7-67 Service Types, Access Restrictions**

- (a) The broadband services shall include, but not be limited to, dark fiber leasing, active Ethernet, shared gigabit, and Internet access for wholesale or retail to commercial or residential customers.
- (b) Prior to providing any commercial or residential service to a customer who is not the owner of the property at which new service is being provided, the customer shall obtain, and provide the City, with the property owner's written consent.
- (c) No customers shall allow their tenants, licensees or landlord, or other person to use services in any manner inconsistent with the agreed scope of property owner's authorization or the HBPW's terms of service for the account for such services.
- (d) No customer shall allow their tenants, licensees, landlord, or other person to use or share their service or passwords in any manner inconsistent with property owner's authorization or the HBPW's terms of service for the account for such services.
- (e) No person shall obtain or use commercial or residential service over or through the HBPW's broadband system without the permission of the HBPW and compliance with the HBPW's rules of account.

A violation of this Section of this ordinance shall be a violation of the City Code and punishable as a misdemeanor pursuant to Section 1-10 of the Holland City Code. Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a person of this Section of this ordinance.

**Sec. 7-69 Rates and Fees.**

- (a) User charges shall be levied to defray the costs of capital, operation, maintenance, replacement, and debt retirement of the broadband services.
- (b) The City Council of the City shall establish rates for the use of and the connection to broadband services based on the advice and recommendation of the HBPW. Service rates shall be consistent with the requirements of MCL 484.3114, as may be amended from time to time.
- (c) The City Council of the City shall amend rates from time to time as may be necessary to support continued operation of the broadband services in a manner consistent with the Business Plan and terms of this ordinance.
- (d) The City may also adopt charges and fees by resolution which shall include:

- (1) Fees for reimbursement of costs of setting up and operating broadband services;
- (2) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports;
- (3) Fees for permit applications including the cost of processing such applications;
- (4) Fees for filing appeals;
- (5) Fees for removal broadband internet access services;
- (6) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the City.

**Sec. 7-70 Compliance with METRO Act.**

The City hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Public Act 48 of 2002 and Michigan Telecommunications Act, Public Act 179 of 1991. 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 such Acts, and shall not do any of the following:

- (a) Adopt an ordinance, rules or a policy that unduly discriminates against another person providing the same service provided, however, that subject to other requirements of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, this subsection shall not be construed as precluding the City from establishing rates different from those of another person providing the same service or providing introductory or special rates.
- (b) Employ terms more favorable or less burdensome than those imposed by the City upon other providers of the same service within its jurisdiction concerning access to public rights-of-ways.
- (c) Impose or enforce against a provider any local regulation with respect to public rights-of-way that is not also applicable to the City in its provision of a telecommunication service provided through broadband services.
- (d) Employ terms more favorable or less burdensome than those imposed by the City upon other providers of the same service within its jurisdiction concerning access to, and rates for, pole attachments.

**Sec. 7-71 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.

Ordinance Adoption Date: \_\_\_\_\_

Ordinance Effective Date: \_\_\_\_\_