

ORDINANCE NO.: 99-2007
INTRODUCED BY: Mayor and Council

**AN ORDINANCE DECLARING A MORATORIUM ON THE
ISSUANCE OF STREET, TREELAWN AND SIDEWALK
OPENING PERMITS TO SERVICE PROVIDERS AS SPECIFIED
IN THIS ORDINANCE; AND DECLARING AN EMERGENCY.**

WHEREAS, under Section 901.02 of the Codified Ordinances of Richmond Heights, Ohio, applicants must first obtain a street, treelawn and sidewalk opening permit from the Building Inspector before making any opening in the Public Right-Of-Way; and

WHEREAS, it is anticipated that Service Providers will be applying to the City seeking to obtain a street, treelawn, and sidewalk permit to construct and install Above Ground Facilities in the Public Right-Of-Way; and

WHEREAS, this Council determines that the unregulated proliferation of these Above Ground Facilities in the Public Right-Of-Way constitutes a public nuisance that interferes with the safe and unobstructed use of the Public Right-Of-Way by traffic, pedestrians and adjoining and abutting property owners; and

WHEREAS, this Council further determines that this public nuisance can be abated by the promulgation of regulations for the placement of Above Ground Facilities in the Public Right-Of-Way to facilitate the needs of Service Providers while protecting the health, safety and welfare of the general public; and

WHEREAS, this Council is considering an ordinance for the use of the Public Right-of-Way by Service Providers that includes obtaining a permit for Above Ground Facilities installations and regulates the placement of these Facilities in the Public Right-of-Way, and obviates the need for Service Providers to obtain street, treelawn and sidewalk opening permits under Section 901.02; and

WHEREAS, this ordinance constitutes an emergency measure for the immediate preservation of the public peace, property, health, safety, or general welfare in that a moratorium on the review of applications for the permitting of street, treelawn and sidewalk openings for Above Ground Facilities by Service Providers is necessary to enable this Council to consider reasonable regulation of the installation of these facilities by Service Providers and prevent unregulated proliferation of Above Ground Facilities by Service Providers through the issuance of a street, treelawn, and sidewalk opening permit prior to either the effective date of the City's regulation of Above Ground Facilities or November 1, 2007, whichever occurs first.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: That, for the reasons stated in the preamble to this ordinance, this Council declares a moratorium on review of applications for and the issuance of street, treelawn and

sidewalk opening permits under Section 901.02 and the Codified Ordinances of Richmond Heights, Ohio, for the placement of Above Ground Facilities in the Public Right-of-Way by Service Providers for a period commencing on the effective date of this ordinance and ending on either the effective date of an ordinance regulating the installation of Above Ground Facilities by Service Providers in the Public Right-Of-Way or November 1, 2007, whichever date occurs first.

Section 2: That, as used in this ordinance, the following words and phrases shall have the following meanings:

(a) “Above Ground Facilities” means that portion of a System located on the surface of the Public Right-of-Way.

(b) “Facilities” means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located in the Public Right-of-Way and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service.

(c) “Public Right-of-Way” means the surface of, and the space within, through, on, across, above or below, the paved or unpaved portion of any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement and any other land dedicated or otherwise designated for a compatible public use, which is controlled by the City.

(d) “Service Provider” means any person who directly or indirectly owns, controls, operates or manages Facilities within the Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide Services.

(e) “Service” means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, video service, information or other utility-like service for a fee directly to the public, or to the classes of users as to be effectively available to the public, regardless of the Facilities used.

(f) “System” means a network of Facilities for the transmission and/or distribution of a Service.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: This Ordinance is declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and general welfare of the

citizens and visitors of the City of Richmond Heights, and for further reason that it is immediately necessary in order for this Council to consider reasonable regulation of the installation of Above Ground Facilities by Service Providers and prevent unregulated proliferation of these facilities. Therefore, provided this Ordinance receives the affirmative vote of five members of Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council