

ORDINANCE NO.: 124-2007
INTRODUCED BY: O'Toole

AN ORDINANCE EXTENDING THE TEMPORARY MORATORIUM ON THE ISSUANCE OF STREET, TREELAWN AND SIDEWALK OPENING PERMITS TO SERVICE PROVIDERS; AND DECLARING AN EMERGENCY.

WHEREAS, this Council is currently considering Ordinance No. 89-2007 related to 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 current Codified Ordinance Section 901.02; and

WHEREAS, Service Providers have applied, and 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 can adversely affect property values; and

WHEREAS, pursuant to Ordinance No. 99-2007, this Council adopted a moratorium on the issuance of permits for street, treelawn and sidewalk openings to be in place until the effective date of Ordinance 89-2007 or November 1, 2007, whichever is sooner; and

WHEREAS, this ordinance constitutes an emergency measure for the immediate preservation of the public peace, property, health, safety, or general welfare in that an extension of the current temporary moratorium on the review of applications through November 15, 2007 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, to adequately consider comments made and to be made by Service Providers to the proposed Ordinance 89-2007 and to 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 15, 2007, whichever occurs first.

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

Section 1: For the reasons stated in the preamble to this Ordinance, this Council extends the moratorium instituted by Ordinance 99-2007 on the 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 through 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 15, 2007, whichever date occurs first.

Section 2: 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, to adequately consider comments

made and to be made by Service Providers on Ordinance 89-2007 and to 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