

TEMPORARY ORDINANCE NO. 29-16

PERMANENT ORDINANCE NO. 30-16

AN ORDINANCE OF THE CITY OF LANCASTER, OHIO, ADOPTING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR RIGHT-OF-WAY USE PERMITS, ZONING CLEARANCE PERMITS, AND/OR CONDITIONAL USE PERMITS FOR TELECOMMUNICATIONS FACILITIES INCLUDING, BUT NOT LIMITED TO, SMALL CELL AND DISTRIBUTED ANTENNA SYSTEMS (DAS), TO BE EFFECTIVE FOR A PERIOD OF THREE (3) MONTHS WITH AUTHORITY FOR THE MAYOR TO GRANT AN ADDITIONAL THREE (3) MONTHS IF NEEDED, AND DECLARING AN EMERGENCY

WHEREAS, the Federal Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat. 56, 31-136, hereinafter the "Act") was designed to remove regulatory barriers and encourage competition among all types of communications companies; and

WHEREAS, the Act ratifies the authority of local government to regulate telecommunications services and carriers, but also limits local governments' authority in certain respects; and

WHEREAS, the Act allows the Federal Communications Commission to preempt any local governmental regulation which prohibits, or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services (Public Law No. 104-104, 110 Stat. 70, Section 253 (a); and

WHEREAS, the City needs to review its codes and ordinances in a comprehensive fashion to determine whether its existing regulations are consistent with the Act and to adopt new regulations if necessary; and

WHEREAS, the City should impose a moratorium barring the acceptance of applications relating to use of the public streets by right-of-way use permits, zoning clearance permits, and/or conditional use permits, for telecommunications services, until the necessary code revisions are complete; now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO

SECTION 1. Definitions. For the purpose of this ordinance, the following definitions shall apply:

A. **Cable Service:** For the purpose of this ordinance, cable service shall have the same meaning as provided for in the Cable Act, 47 U.S.C. Sec. 532, et seq., as it now exists or is hereafter amended.

B. **Overhead Facilities:** means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

C. **Public Street:** means any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City,

which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

D. **Telecommunications Carrier:** means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property, used or to be used for the purpose of offering telecommunications services.

E. **Telecommunications Facilities:** means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, poles, electronic and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

F. **Telecommunications Service:** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, image, graphic, data and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, small cell, distributed antenna system (DAS), or similar facilities, with or without benefit of any closed transmission medium.

G. **Underground Facilities:** means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the streets or rights-of-way of the City, and used or to be used for the purpose of providing utility or Telecommunications Services.

H. **City Administration:** means the Mayor, Service-Safety Director, Law Director and Auditor.

SECTION 2. Purpose. The purpose of this moratorium is to allow the City adequate time to comprehensively study the City's existing ordinances and codes to ensure they are consistent with the Telecommunications Act, and develop new ordinances to amend inconsistencies and/or cover situations not addressed by existing regulations.

SECTION 3. Moratorium Imposed. City Council hereby imposes a moratorium on the establishment, location, and permitting of telecommunications carriers/facilities within the City, by telecommunications carriers or cable operators, whether on, through, over or under public property of the public streets, through the use of overhead or underground telecommunications or utility facilities. During the term of this moratorium unless earlier terminated by City Council by ordinance, the City will not accept any right-of-way use permit applications, zoning clearance permit applications, and/or conditional use permit applications for telecommunications and/or cable services/facilities, nor will the City accept any building permit or use permits (Zoning Code) applications for the location, establishment or siting of any telecommunications facilities in the City.

SECTION 4. Duration of Moratorium. The moratorium imposed by this ordinance shall be in effect for a period of three (3) months with an additional three (3) months authorized by the Mayor, if necessary, beginning on the date of the adoption of this ordinance. During this period, the City will review and study the issue as it relates to applications for the use and occupation of City streets, rights-of-way, and other City property by telecommunications carriers, cable providers, and others, and develop recommendations for the City's future action to address the Telecommunications Act of 1996, which may include proposed regulations, for telecommunications and cable services or telecommunications facilities in the City.

SECTION 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 6. Declaration of Emergency. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare. The reason for such necessity is that without an immediate moratorium on the City's acceptance of permit applications under the Building and Zoning Codes, processing of such applications by the city could occur under regulations that are inconsistent with the Telecommunications Act of 1996 and regulations that could possibly be preempted by the Federal Communications Commission. Therefore, the City's moratorium must be imposed immediately to prevent any development rights from vesting and the City's ability to process applications under valid codes preserved. Therefore, this ordinance shall go into immediate effect.

Passed: 10/24/2016 after 1st reading. Vote: Yeas 9 Nays 0

Approved: 10/24/2016

Clerk: Teresa Lee Sandy

REB Hedgepeth  
President of Council

Offered by: Melody L. Bobbitt

Bob  
Mayor

Second by: [Signature]

Requested by Public Works Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2016 and \_\_\_\_\_, 2016 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

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Clerk of Council