

ORDINANCE NO. 20

PENINSULA TOWNSHIP

CABLE TELEVISION ORDINANCE

An Ordinance to establish controls for cable television and to provide penalties for the violation thereof.

THE TOWNSHIP OF PENINSULA

GRAND TRAVERSE COUNTY, MICHIGAN

ORDAINS:

Section 1: Nonexclusive Franchises:

The Township, upon approval of the Board, may grant a nonexclusive franchise for the occupation and use of streets, roads, and airways in the Township for construction, operation and maintenance of a cable system. Nothing in this ordinance or in any such franchise shall affect the right of the Township to grant other nonexclusive franchises for cable television purposes or for telecommunications purposes.

Section 2: Franchise Required:

No cable system shall occupy or use the streets, roads, alleys, rights of way, or airways of the Township and no cable operator shall operate a cable system in the Township without an accepted franchise granted pursuant to this Ordinance.

Section 3: Franchise Duration:

A cable television franchise may be granted for a maximum of ten years.

Section 4: Franchise Fee:

A franchise fee shall be negotiated and agreed upon in the franchise. The terms and amounts of the franchise fee may vary between franchises.

Section 5: Annual Subscriber Review:

Not less than once in each calendar year a franchise holder shall solicit and receive subscriber input regarding all activities of the cable system. A synopsis of such subscriber input shall be promptly submitted in writing to the Township Clerk and the Cherry Capital Cable Council.

Section 6: Franchise Cancellation:

The Township may revoke and cancel a cable television franchise at any time prior to the date of expiration upon a finding, made after thirty days notice of the proposed cancellation and a public hearing, that the franchise holder has failed to cure one or more of the following defects during a

sixty-day period following written notice by the Township Supervisor to the franchise holder of such a defect:

- a. A substantial breach, whether by act or omission, of any material terms or conditions of this ordinance or the franchise;
- b. A material misrepresentation of fact in the application for or negotiation of the franchise;
- c. Insolvency of the franchise holder, inability or unwillingness of the franchise holder to pay its just debts when they accrue or application of the franchise holder for adjudication as a bankrupt; or
- d. Consistent failure to provide subscribers or users with services in accordance with this ordinance, the franchise or applicable Federal, State or local laws or regulation.

Section 7: Cherry Capital Cable Council:

In order to ensure that the residents of this area have the benefit of the best and most economical cable television service and in order to distribute the costs of regulation, and coordinate regulation and franchising, the Cherry Capital Cable Council (Cable Council) has been formed under the provisions of the Urban Cooperation Act. MCLA 124.501 et seq; MSA 5.4088(1) et seq. The Township is a party to that intergovernmental agreement. The Township shall select a cable television franchisee, but delegates regulating, monitoring, reporting and complaint processes to the Cable Council including the following functions:

- a. Regulate basic service tier and equipment rates of cable television pursuant to Federal Communications Commission (FCC) certification and procedures;
- b. Review cable rates and file complaints with the FCC, if needed;
- c. Recommend franchise requirements;
- d. Act as liaison between franchising authorities, cable company, schools, lessees of cable service, subscribers and citizens;
- e. Hear and decide citizen and subscriber complaints and make recommendations as may be set out in the local franchises;
- f. Advise franchising authorities of laws, regulations and technical aspects of cable television;
- g. Enforce the customer service requirements established by the FCC, this Ordinance or any franchise issued hereunder; and
- h. Perform such other functions as may be requested by a participating franchising authority.

Section 8: Franchise Transfer:

A franchise issued under this ordinance shall not be transferred or assigned without the consent of the Township, except as otherwise provided in the franchise agreement. A

franchise holder shall not sell, transfer or otherwise change more than ten percent of the ownership in the franchise without prior written notification to the Township Clerk.

Section 9: Bonds and Insurance:

(a) Prior to operating or constructing, a franchise holder shall file a bond with the Cherry Capital Cable Council in an amount set forth in the franchise agreement to ensure compliance with this ordinance.

(b) The franchise holder shall pay, and by its acceptance of the franchise expressly agrees to pay, all damages and penalties which the Township may legally be required to pay as a result of the franchise holder's negligence in the construction, operation or maintenance of the system authorized herein. However, the Township shall provide prompt notice to the franchise holder of such a claim, afford the franchise holder the opportunity to defend, settle or otherwise resolve the claim in the franchise holder's discretion and assist the franchise holder therein in any reasonable way upon the request of the franchise holder. The franchise holder shall carry and pay the costs of liability insurance in support of its undertaking, to hold the township harmless from loss sustained on account of the negligence of the franchise holder, for injury to or death of persons and injury to or destruction of property. The amount of such insurance shall be established by the franchise.

(c) The franchise holder shall comply with the Workers' Compensation Law of Michigan.

(d) An insurance policy or bond shall contain a provision that it shall not be altered, terminated or otherwise allowed to expire prior to sixty days after written notice to that effect is given to the Township Clerk.

Section 10: Abandonment:

Upon the expiration, revocation or non-renewal of any franchise granted pursuant to this chapter, if facilities are not salvaged within a reasonable time, title to all such property shall pass to the Township.

Section 11: Authorization for Use of Right of Ways:

A franchise granted pursuant to this ordinance shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above, across and from the streets, easements and rights of ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the installation, construction, maintenance and operation of a cable system or for the furnishing of a cable television service.

Section 12: Construction; Approval Required:

Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operations of a system under a franchise granted pursuant to this ordinance, the franchise holder desiring to erect or install such facilities for use in connection with its system shall first submit to the Township Clerk for approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map indicating the proposed location of such facilities. Such erection or installation shall not be commenced until the same is approved by the Township. Such approval shall not be unreasonably withheld.

Section 13: Joint Pole Attachments:

Upon written request of a public utility or municipality, a franchise holder shall grant it reasonable attachment space on its facilities within the right of way at a reasonable rental charge. The utility shall pay costs incurred in providing attachment space, including the costs of rearranging the franchise holder's wires, cables or equipment and replacement costs if required.

Section 14: Underground Facilities:

In areas or portions of the Township where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any franchise holder shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

Section 15: Construction Standards; Safety:

All construction, installation, maintenance and operation of any cable system or of any facilities employed in connection therewith shall be in compliance with applicable provisions of the National Electrical Safety Code, as prepared by the National Bureau of Standards, the National Electrical Code of the National Fire Protection Association, the Bell Telephone Systems Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto. Each system installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

Section 16: Street Openings; Barricades & Warning Lights: Any opening or obstruction in, disturbance of or damage to a road, street, alley, public right of way or public place by any person in the exercise of any right granted pursuant to a franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public right of way or public

place and shall be promptly repaired, at the franchise holder's expense, all in a manner specified and approved by the government having jurisdiction. Such approval shall not be unreasonably withheld.

Section 17: Relocation of Facilities:

A cable operator or a person acting under a cable operator shall, at its expense, and without reimbursement from the Township, upon request of the Township relocate, remove, temporarily disconnect, protect or support facilities in roads, streets, alleys, easements, public right of ways or public places. A cable operator shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission distribution wires or cables to permit the moving of any building or other structure provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than 30 days in advance of the activity requested, unless an emergency situation exists.

Section 18: Costs for Work by Governmental Entity:

If after reasonable notice and opportunity to correct, a cable operator or any person acting under a cable operator fails to commence, pursue or complete any work required by law or this ordinance to be done in any road, street, alley, public right of way, easement or public place, the appropriate governmental entity may cause such work to be done, and such cable operator shall pay to the governmental entity the cost thereof within thirty days of receipt of an itemized statement of such cost.

Section 19: Basic Rate Regulation:

(a) Authority. The Federal Communications Commission (FCC) pursuant to the Cable Act of 1992 has determined that regulation of cable rates is to be done jointly by the FCC and local governments with local governments being generally responsible for regulating the rates of the basic service tier and the equipment used to receive that tier. The FCC approval for the Township regulation of basic rates jointly with other franchising authorities through the Cherry Capital Cable Council has been given. The Council shall regulate basic rates within this Township.

(b) FCC Regulations. All regulations established by the FCC will be followed and shall take precedence over the rate regulation rules established by this Ordinance. Such rules shall be interpreted so as to be in conformity with the FCC regulations.

(c) Rules. The regulation of rates for the basic service tier and equipment (hereinafter referred to as basic rates) of all cable system operators shall be governed by the following:

- (i) Rates shall not be charged unless approved by the Cherry Capital Cable Council (Cable Council) or the FCC pursuant to federal law and regulation.
- (ii) Before approving any basic rate the Cable Council shall hold at least one public hearing.
- (iii) Notices of all public hearings to consider basic rates shall be published in advance at least 3 and not more than 14 days before the hearing.
- (iv) Publication of notice of a basic rate hearing shall be done in both the Traverse City Record-Eagle and Leelanau Enterprise.
- (v) Advance written notice of a basic rate hearing shall also be given by mail to the affected cable operator and anyone filing a written request for such notice with the Cable Council within the 12 months preceding the scheduled hearing date.
- (vi) At the public hearing any interested person may appear in person or in writing and present evidence and opinion to the Cable Council on the issues.
- (vii) A cable operator or other person requesting a change in basic rates or establishment of a new basic rate (applicant) shall have the burden of justifying the request by substantial evidence and shall have the burden of going forward with the evidence.
- (viii) Only the Cable Council, the cable operator, applicant or other person recognized by the Cable Council as a substantially interested party may cross examine witnesses.
- (ix) After all interested parties have had a reasonable opportunity for presenting evidence and opinion, the Cable Council shall close the hearing and make its determination by an action approved by at least a majority of members currently in office.

(d) Basic Tier and Equipment. The franchise agreement shall establish the basic service tier and equipment used to receive that tier.

Section 20: Customer Service Standards:

(a) The Federal Communication Commission's customer service obligations shall be enforced locally and such authority for enforcement is hereby delegated to the Cherry Capital Cable Council, Title 47 CFR, Section 76.309.

(b) In addition, the following customer service obligations are hereby established:

- (i) Dispute Resolution Procedure: The cable operator shall establish a procedure for resolving subscriber complaints that includes an

opportunity for a meeting in Traverse City with an employee of the cable operator having authority to resolve the dispute. The procedure shall also include an appeal after such meeting to the Cherry Capital Cable Council who shall render a non-binding decision.

- (ii) Advance Review Notice to Cherry Capital Cable Council of Brochure. At least 30 days prior to sending any brochure or written material describing the general offerings or services of the cable operator, other than program or event specific advertising, copies shall be filed with the Cherry Capital Cable Council for its review and comment.

(c) Notice. Before starting litigation to enforce the penalty provisions of this Ordinance for violation of this section, the Cherry Capital Cable Council shall give a cable operator 30 days advance written notice and an opportunity to correct the violation of the customer service obligation. If not so corrected or, if in the Council's opinion another similar violation occurs, no such notice need be further given before seeking a remedy or imposing a penalty.

Section 21: Penalty:

If any provision of this Ordinance is violated by a franchise holder, cable operator, or other person or entity, such violation shall be subject to a penalty of \$500 per day for each day of violation, the cost of all litigation including actual attorneys fees, and the costs of all corrective measures and damages resulting from violation of the Ordinance. Such penalty shall be in addition to the enforcement of any bond or insurance which may be available to remedy the violation.

Effective Date: This Ordinance shall take effect 30 days after publication in the Traverse City Record-Eagle.

ROBERT K. MANIGOLD, Supervisor
LORRIE DEVOL, Clerk
Peninsula Township
Passed by the Town Board on:
December 14, 1993
Prepared in the offices of:
Running, Wise, Wilson, Ford &
Phillips
By: Richard W. Ford
Township Attorneys
Business Address:
326 E. State Street
P.O. Box 686
Traverse City, MI 49684

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TO THE RECORD EAGLE:

Please publish on:

January ²⁷~~28~~, 1994

Please send affidavit to:

Richard W. Ford

Please send bill to:

Mrs. Lorrie DeVol
Peninsula Township Clerk
18534 Mission
Traverse City, MI 49684

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RECEIVED BY THE RECORD EAGLE:

Date: 1-18-94

Time: 4:40

By: *R. John*